

NATIONAL BANK OF MOLDOVA

DECISION
on approval of Regulation on own funds of banks and capital requirements
No 109 of 24 May 2018
(in force from 30 July 2018)

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Registered:
by the Ministry of Justice of the Republic of Moldova
under No 1332 of 4 June 2018

Pursuant to Article 5, paragraph (1), letter (d), Article 11, paragraph (1), Article 27, paragraph (1), letter (c) and Article 44, letter (a) of Law No 548-XIII of 21 July 1995 on the National Bank of Moldova (republished in the Official Monitor of the Republic of Moldova, 2015, No 297-300, Article 544), as further amended and supplemented, and Article 60, 61 and 62 of Law No 202 of 6 October 2017 on the activity of banks (published in the Official Monitor of the Republic of Moldova, 2017, No 434-439, Article 727), as further amended and supplemented, the Executive Board of the National Bank of Moldova,

DECIDED:

1. To approve the Regulation on own funds of banks and capital requirements, according to the Annex.
2. To repeal the Regulation on risk-weighted capital adequacy, approved by Decision of the Council of Administration of the National Bank of Moldova No 269 of 17 October 2001 (published in the Official Monitor of the Republic of Moldova, 2001, No 130, Article 310), registered with the Ministry of Justice of the Republic of Moldova on 4 May 2010 under No 749, as further amended and supplemented.
3. From the date of entry into force of this Decision, banks shall ensure compliance of their business, including internal policies and regulations, with its requirements.
4. The subscribed own capital and related share premium accounts which have been classified as Tier 1 capital in accordance with the requirements of the Regulation referred to in paragraph 2 shall qualify as common equity Tier 1 capital even if the conditions set out in paragraph 16 of the Regulation referred to in paragraph 1 are not met.
5. The items and related share premium accounts, which have been classified as Tier II capital in accordance with the requirements of the Regulation referred to in paragraph 2, qualify as Tier 2 own funds items, even if the conditions set out in paragraph 97 of the Regulation indicated in paragraph 1 are not met.
6. Intermediate profits earned by the bank after the entry into force of this Decision shall be included in the calculation of common equity Tier 1 capital only under the conditions specified in paragraph 13 of the Regulation referred to in paragraph 1.
7. Banks shall review their own funds in order to determine whether they meet the eligibility criteria set out in the Regulation referred to in paragraph 1 and, if applicable, within 6 months from the date of entry into force of this Decision, shall submit to the National Bank of Moldova a step-by-step adjustment plan for instruments that do not meet the eligibility criteria approved by the board of the bank but which will not exceed 3 years from the date of entry into force of this Decision.
8. Upon expiration of 3 years from the date of entry into force of this Decision, instruments which do not meet the eligibility criteria set out in the Regulation referred to in paragraph 1 shall not be included in the own funds.

9. By way of derogation from paragraph 3, for the period up to 30 July 2019, the non-observance of prudential indicators on 30 July 2018, shall not be considered as breach in the case of breaches resulting from the determination of the amount of own funds in accordance with the provisions of the Regulation referred to in paragraph 1. The bank, which at the date of entry into force of this Decision does not comply with the prudential indicators as a result of the determination of own funds in accordance with the provisions of the Regulation referred to in paragraph 1, shall submit to the National Bank of Moldova, within a three-month term after the entry into force of this Decision, an action plan for a period ending on 30 July 2019, which shall include measures to comply with the limits of the respective prudential indicators.

10. Banks that have been prescribed, on the 30 July 2018, requirements to develop compliance plans with certain capital limits, which term exceeds 30 July 2019, shall review their compliance plans and adjust them to the new requirements for the limits relating to own funds, without changing the timing of the elaborated plans.

11. The provisions of paragraphs 9 and 10 are without prejudice to the competences of the National Bank of Moldova regarding the application of supervision measures, sanctions and sanctioning measures for the breaches committed by the bank.

12. Any reference in the regulatory acts of the National Bank of Moldova existing at the date of entry into force of this Decision to the term "total regulatory capital" and "TRC" shall be considered as a reference to the term "own funds" and the reference to the term "Tier 1 capital", "first-tier capital" shall be considered as a reference to the term "common equity Tier 1 capital".

13. This Decision shall enter into force on 30 July 2018.

**Chairman
of Executive Board
of the National Bank of Moldova
No 109, Chisinau, 24 May 2018**

Sergiu CIOCLEA

Note: Throughout the text:

- a) the words "regulatory acts of the National Bank of Moldova related to the treatment of banks' credit risk according to the standardised approach", in any grammatical case, are replaced by the text "Regulation No 111/2018", in the respective grammatical case;*
- b) the words "regulatory acts of the National Bank of Moldova related to the treatment of the market risk according to the standardised approach", in the respective case, are replaced by the text "Regulation No 114/2018", in the respective case;*
- c) the words "regulatory acts of the National Bank of Moldova related to capital buffers for banks" and the words "regulations of the National Bank of Moldova related to capital buffers for banks", in any grammatical case, are replaced by the text "Regulation No 110/2018 ", in the respective grammatical case according to NBM Decision No 16 of 03 February 2022, in force from 25 March 2022.*

REGULATION **on own funds of banks and capital requirements**

This Regulation transposes:

- Article 4 (1), paragraphs (102)-(104), paragraphs (107)-(114), paragraphs (117)-(120), paragraph (122), paragraph (126), paragraph (128), Article 25, Article 26 (1)-(3), Article 28, Article 30, Article 31, Articles 33-39, Articles 41-48, Articles 50-75, Articles 77-79, Article 81, Article 82, Article 84 (1) and (5), Article 85 (1), Article 86, Article 87 (1), Article 88, Articles 92-94, Article 99 (1) of Regulation No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, and amending Regulation (EU) No 648/2012, published in the Official Journal of the European Communities No L 176 of 27 June 2013, as amended by the delegated Regulation (EU) 2015/62 of 10 October 2014;
- Articles 2-3, Article 7a, Article 7b (1), Article 8, Article 9 (1)-(4), Articles 13-15a (1)-(2), Articles 15b-16 (1), Articles 20-23, Article 24a (1), Articles 27-31, Article 33 and Article 34a (1), (3), (4), (6) and (7) of delegated Regulation (EU) No 241/2014 of the Committee of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council on regulatory technical standards for the own funds requirements of credit institutions, published in the Official Journal of the European Communities No L 148/4 of 20 May 2014; Commission Regulation (EU) No 2015/923 of 11 March 2015 amending Regulation (EU) No 241/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council as regards the regulatory technical standards of requirements for own funds in the case of institutions, published in the Official Journal of the European Communities No L 135 of 2 June 2015.

[Harmonisation clause amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

Chapter I **GENERAL DISPOSITIONS**

1. This Regulation regulates the own funds calculation methodology and sets out the requirements for own funds and items that are included in the calculation of own funds, deductions from own fund items, reductions in the levels of own funds and other requirements for determining them. This Regulation applies both on an individual and consolidated basis.

[Par. 1 supplemented by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

2. This Regulation shall be applied to banks headquartered in the Republic of Moldova, branches in the Republic of Moldova of banks from other states, which are licensed by the National Bank of Moldova, hereinafter referred to as “banks”.

3. This Regulation shall not prevent banks from holding own funds and components thereof which exceed the requirements of this Regulation or from applying more stringent measures than those provided for in this Regulation.

4. The terms, notions and expressions used in this Regulation have the meaning of those laid down in Law No 202 of 6 October 2017 on the activity of banks. For the purposes of this Regulation, the following definitions shall apply:

assets of the defined benefit pension fund - the assets of a defined benefit pension plan or fund, as the case may be, calculated after they have been reduced by the amount of obligations under the same plan or fund;

deferred tax assets that rely on future profitability - deferred tax assets the future value of which may be realised only in the event the bank generates taxable profit in the future;

distribution - payment of dividends or interest in any form;

indirect holding - any exposure to an intermediate entity that has an exposure to capital instruments issued by a financial sector entity where, in the event the capital instruments issued by the financial sector entity were permanently written off, the loss that the bank would incur as a result would not be materially different from the loss the bank would incur from a direct holding of those capital instruments issued by the financial sector entity;

reciprocal cross holding - a holding by a bank of the own funds instruments or other capital instruments issued by financial sector entities where those entities also hold own funds instruments issued by the bank;

synthetic holding - an investment by a bank in a financial instrument the value of which is directly linked to the value of the capital instruments issued by a financial sector entity;

own funds instruments - capital instruments issued by the bank that qualify as common equity Tier 1, additional Tier 1 or Tier 2 instruments;

distributable items - the amount of the profits at the end of the last financial year plus any profits brought forward and reserves available for that purpose before distributions to holders of own funds instruments less any losses brought forward, profits which are non-distributable pursuant to provisions in legislation or the bank's bye-laws and sums placed to non-distributable reserves in accordance with applicable national law or the statutes of the bank, those losses and reserves being determined on the basis of the individual accounts of the bank and not on the basis of the consolidated accounts.

minority interest - the amount of common equity Tier 1 capital of a subsidiary of a bank that is attributable to natural or legal persons other than those included in the prudential scope of consolidation of the bank.

[Par. 4 supplemented by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

Chapter II

OWN FUNDS AND OWN FUNDS ITEMS

5. The own funds of a bank are made up of the amount of Tier 1 own funds and Tier 2 own funds.

6. The Tier 1 own funds of the bank are made up of the amount of common equity Tier 1 capital and the additional Tier 1 own funds of the bank.

7. The common equity Tier 1 capital of a bank consists of items of common equity Tier 1 capital after applying the adjustments set out in paragraphs 26-29, deductions under paragraph 30, and the exemptions and options set out in paragraphs 63-67 and paragraph 126.

8. Additional Tier 1 own funds of a bank consist of additional Tier 1 own funds items after deducting the items mentioned in paragraph 87 and after applying the provisions of paragraph 126.

9. The Tier 2 own funds of a bank consist of the items of Tier 2 own funds after the deductions specified in paragraph 100 and after applying the provisions of paragraph 126.

Chapter III COMMON EQUITY TIER 1 CAPITAL

Section 1 Items and instruments of common equity Tier 1 capital

Subsection 1 Items of common equity Tier 1 capital

10. The items of common equity Tier 1 capital consist of:

1) capital instruments, including ordinary shares issued by the bank subject to the conditions set out in Subsection 2 of this Chapter, or, as the case may be, the capital provided to the branch of the Republic of Moldova by the bank of another state, which fully covers the losses in conditions for ensuring the continuity of the activity and which, in the event of its liquidation, has a lower priority ranking than all other claims. These amounts are taken into account in so far as they are actually paid.

- 2) share premium accounts related to the instruments referred to in sub-paragraph 1);
- 3) retained earnings;
- 4) other accumulated comprehensive income;
- 5) other reserves.

11. For the purposes of paragraph 10, sub-paragraph 5), other reserves are understood to mean the reserves within the meaning of the accounting framework that are subject to disclosure obligations under the applicable International Financial Reporting Standard except for amounts already included in other accumulated comprehensive income or retained earnings.

12. Items referred to in paragraph 10, sub-paragraphs 3) - 5) are recognized as items if common equity Tier 1 capital only if the bank is available for unrestricted and immediate use in order to cover the risks or losses as soon as they occur.

13. For the purpose of paragraph 10, sub-paragraph 3), banks may include interim or end-of-year profits in common equity Tier 1 capital before examination, within the general meeting of shareholders, of the bank's annual financial report, only with the prior approval of the National Bank of Moldova. The National Bank of Moldova shall grant such approval if the following conditions are met:

1) the profits in question were audited by an audit firm, and that audit consisted of a financial statement audit report or a FINREP financial statement review report in accordance with International Standard on Review Engagements 2410 (International Standard on Review Engagements 2410) in the case of interim profits to the statements of June 30 or September 30 which record that the given profits have been adequately reflected by the bank in accordance with the principles set out in the accounting framework;

2) the bank has demonstrated to the National Bank of Moldova that any foreseeable liabilities or dividends have been deducted from those profits.

[Par.13 amended by NBM Decision No 161 of 26 August 2021, in force from 10 October 2021]

14. In order to obtain the approval mentioned in paragraph 13, banks shall address to the National Bank of Moldova, in writing, a request to this effect, enclosing the report of the audit firm and the bank statement indicating that the amounts in question are net of obligations and foreseeable dividends. The National Bank of Moldova shall examine the request within no more than 15 business days from the date of the request with the mentioned documents.

15. For the purposes of paragraph 13, sub-paragraph 2), the meanings of the concepts of "foreseeable liabilities" and "foreseeable dividends" are set out in Annex 1 to this Regulation.

Subsection 2 Instruments of common equity Tier 1 capital

16. Equity instruments qualify as instruments of common equity Tier 1 capital only if the following conditions are met cumulatively:

- 1) the instruments are issued directly by the bank with the prior consent of shareholders of the bank or its management body;
- 2) instruments are fully paid in cash and their purchase is not directly or indirectly financed by the bank;
- 3) the instruments meet, cumulatively, the following conditions for their classification:
 - a) qualify as equity subscribed by shareholders;
 - b) are classified as equity within the meaning of the accounting framework;
 - c) are classified as equity for the purposes of establishing the net negative asset;
- 4) the instruments are presented clearly and distinctly in the balance sheet of the financial statements of banks;
- 5) instruments are perpetual;
- 6) the amount of the principal of instruments may not be reduced or refunded except in any of the following cases:
 - a) bank liquidation;
 - b) discretionary redemption of instruments (acquisition of shares) or other discretionary means of diminishing the capital, if the bank has previously received the approval of the National Bank of Moldova in accordance with paragraph 119;
- 7) the provisions governing the instruments do not explicitly or implicitly indicate that the amount of the principal of instruments is, or may be, reduced or refunded in other cases than the liquidation of the bank, and the bank does not otherwise provide such an indication prior to or upon the of instruments;
- 8) instruments fulfil the following conditions in respect of distributions:
 - a) there is no preferential distribution treatment with regard to the distribution order, including in relation to instruments of common equity Tier 1 capital, and the conditions governing the instruments do not give preferential rights to distributions;
 - b) distributions to instruments' holders can only be made from distributable items;
 - c) the conditions regulating the instruments do not include a ceiling or other restriction on the level of distributions;
 - d) the level of distributions is not determined on the basis of the purchase price of the instruments at issuance;
 - e) the conditions regulating the instruments do not include any obligation for the bank to distribute to their holders and the bank is not otherwise subject to such an obligation;
 - f) non-operation to distribute is not a default for the bank;
 - g) cancelling distributions does not impose restrictions on the bank.
- 9) in comparison with all the equity instruments issued by the bank, the instruments absorb the first and proportionally most of the losses as they arise, and each instrument absorbs losses in the same way as the other instruments of common equity Tier 1 capital;
- 10) instruments are ranked inferior to all other claims in case of liquidation of the bank;
- 11) instruments give their owners the right to a claim on the residual assets of the bank which, in the event of liquidation and after payment of all priority claims, is proportionate to the sum of such instruments issued, is not fixed and is not capped;
- 12) the instruments are not secured and are not the subject of a guarantee increasing the level of priority of payment of claims from either of the following:
 - a) bank or its subsidiaries;
 - b) parent undertaking of the bank or its subsidiaries;
 - c) parent financial holding company or its subsidiaries;
 - d) mixed-activity holding company or its subsidiaries;
 - e) mixed financial holding company and its subsidiaries;
 - f) any undertaking which has close links with the entities referred to in the above paragraphs;

13) the instruments are not subject to any contractual or other arrangements which increase the rank of priority of payment of claims under instruments in case of insolvency or liquidation.

17. The condition set out in paragraph 16, sub-paragraph 6) is deemed to be met even if the amount of the principal capital instrument is reduced in a resolution procedure or as a consequence of a reduction in the value of the capital instruments imposed by the National Bank of Moldova, as resolution authority.

18. The condition referred to in paragraph 16, sub-paragraph 7) shall be deemed to have been complied with even if the provisions regulating the capital instrument explicitly or implicitly indicate that the principal amount of the instrument would or could be reduced in the course of a resolution procedure or as a consequence of a reduction of the value of the capital instruments imposed by the National Bank of Moldova, as resolution authority.

19. The condition set out in paragraph 16, sub-paragraph 8), letter c) shall be deemed to have been complied with even if the instrument involves the payment of a dividend multiple, provided that the dividend multiple does not lead to a distribution that creates a disproportionate burden on the capital.

20. For the purposes of paragraph 16, sub-paragraph 8), letter a), differentiated distribution reflects only differentiated voting rights. In this regard, a larger distribution applies only to instruments of common equity Tier 1 capital with fewer voting rights or no voting rights.

21. The conditions set out in paragraph 16, sub-paragraph 9) are considered to be met, even if the amount of the main additional Tier 1 or Tier 2 own funds instruments is permanently reduced.

22. The nature and forms of direct and indirect funding of own funds instruments are set out in Annex 2 to this Regulation.

23. For the purposes of paragraph 19, the conditions under which distributions are considered to be a disproportionate burden on own funds and the definition of preferential distributions are set out in Annex 3 to this Regulation.

Subsection 3

Consequences of cessation of fulfilment of conditions for instruments of common equity Tier 1 capital

24. Where an instrument of common equity Tier 1 capital no longer meets any of the conditions set out in Subsection 2 of this Chapter, the following provisions shall apply:

a) the respective instrument shall immediately cease to qualify as instrument of common equity Tier 1 capital;

b) the share premium accounts for the respective instrument shall immediately cease to qualify as common equity Tier 1 capital items.

Subsection 4

Equity instruments subscribed by public authorities in emergency situations

25. In emergency situations, the National Bank of Moldova may allow the bank to include equity instruments in the common equity Tier 1 capital that meet at least the conditions set out in paragraph 16, sub-paragraphs 2)-5), when the following conditions are cumulatively met:

- 1) equity instruments are issued after the date of entry into force of this Regulation;
- 2) equity instruments are considered state aid by the Competition Council;
- 3) equity instruments are issued in the context of recapitalization measures under existing state aid rules at that time;
- 4) equity instruments are owned and held in full by the Government or a relevant public authority or entity;
- 5) capital instruments are capable of absorbing losses;
- 6) in the event of liquidation, equity instruments give their owners the right to a claim on the residual assets of the bank after paying all priority claims;
- 7) there are appropriate exit mechanisms for the Government or, as appropriate, a relevant public authority or entity;

8) The National Bank of Moldova granted the permission in advance and made public its decision together with an explanation of this decision.

Section 2

Prudential filters for treasury cash flows, changes in the value of their own liabilities and additional adjustments of value

26. Banks do not include in their own funds items the following:

- 1) fair value reserves, representing gains or losses arising from treasury cash flow of financial instruments that are not measured at fair value, including the projected cash flows;
- 2) gains or losses recorded by the bank from the fair value measurement of debt and resulting from the change in its credit risk;
- 3) gains and losses from the fair value measurement of the liabilities arising from the derivative financial instruments of the bank resulting from the change in its credit risk.

27. For the purposes of paragraph 26, sub-paragraph 3), banks cannot offset the gains and losses arising from the fair value measurement resulting from the credit risk of the bank with those resulting from the change in the credit risk of its counterparty.

28. For calculating the amount of own funds, banks shall perform the following additional value adjustments:

- 1) apply the prudent valuation requirements set out in the Regulation on the treatment of the market risk according to the standardised approach, approved by the Decision of the Council of Administration of the National Bank of Moldova No 114 of 24 May 2018 (hereinafter referred to as "Regulation No 114 of 24 May 2018" for all their assets measured at fair value and deduct from common equity Tier 1 capital the amount of any necessary additional value adjustments, with the mentioned assessment;
- 2) deduct from common equity Tier 1 capital the positive difference between asset write-downs and conditional commitments calculated in accordance with the Regulation on assets and conditional commitments classification, approved by the Decision of the Council of Administration of the National Bank of Moldova No 231 of 27 October 2011 and the amount of discounts for expected losses from depreciation of the same assets and provisions for expected loss to the same conditional commitments formed in accordance with International Financial Reporting Standards.

[Par. 28 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

29. Except for the items set out in paragraph 26, banks do not make adjustments to remove the unrealised gains or losses arising from the fair value measurement of assets or liabilities from their own funds.

Section 3

Deductions from the items of common equity Tier 1 capital, exemptions, and alternatives

Subsection 1

Deductions from the items of common equity Tier 1 capital

30. Banks shall deduct from the items of common equity Tier 1 capital the following:

- 1) losses of the current financial year;
- 2) intangible assets;
- 3) deferred tax assets that rely on future profitability;
- 4) assets of the pension fund with defined benefit from the balance sheet of the bank;
- 5) direct, indirect, and synthetic holdings of a bank of common equity Tier 1 capital, including treasury shares, as well as items of common equity Tier 1 capital that a bank has a real or contingent obligation to acquire under an existing contractual obligation;

6) direct, indirect and synthetic holdings of instruments of common equity Tier 1 capital/equity of entities of the financial sector identified by the National Bank of Moldova as part of the supervisory process as being designed to increase artificially the own funds of the bank;

7) the applicable amount of direct, indirect, and synthetic holdings of common equity Tier 1 capital/equity of entities of the financial sector where the bank does not hold a significant investment;

8) the applicable amount of direct, indirect, and synthetic holdings of common equity Tier 1 capital/equity of entities of the financial sector in which the bank does not hold a significant investment;

9) the amount of items to be deducted from additional Tier 1 own funds items in accordance with paragraph 87 which exceeds the additional Tier 1 own funds of the bank;

10) the amount of the exposure for incomplete transactions, in accordance with the Regulation on the treatment of settlement/delivery risk for banks, approved by the Decision of the Executive Board of the National Bank of Moldova No 115 of 24 May 2018, which qualifies for a risk weight of 1000%, when the bank deducts the amount of that exposure from the amount of the items of common equity Tier 1 capital as an alternative to the application of a 1000% risk weight;

11) any tax on common equity Tier 1 capital items that is predictable at the time of its calculation, unless the bank adjusts the amount of common equity Tier 1 capital to the extent that such taxes reduce the amount for these items that can be allocated to cover risks or losses.

[Par. 30 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

31. For the purposes of paragraph 30, sub-paragraph 11), when the bank applies an accounting framework and accounting policies that provide for full recognition of current and deferred debts on fees related to transactions and other events recognized in the balance sheet or in the balance of the profit and loss account, it may consider that the foreseeable taxes have already been taken into account.

32. The rules for indirect and synthetic holdings provided for in this Subsection and their method of calculation are set out in Annex 4.

Subsection 2

Deduction of current year losses and intangible assets

33. For the purposes of paragraph 30, sub-paragraph 1), in order to calculate the common equity Tier 1 capital during the financial year and regardless of whether the bank closes its financial statements at the end of each interim period, it shall draw up the profit and loss account, and deduct any losses arising from common equity Tier 1 capital, as they occur.

34. For the purpose of drawing up the profit and loss account in accordance with paragraph 33, revenue and expense are set in the same process and on the basis of the same accounting standards as for the end-of-year financial report. Revenue and expenditure should be estimated with caution and allocated to the interim period in which they occurred so that each interim period includes a reasonable amount of anticipated annual revenue and expenditure. Significant or non-recurring events will be considered in full and without delay in the interim period in which they occur.

35. If the losses for the current financial year have already reduced common equity Tier 1 capital items as a result of an interim or end-of-year financial report, the deduction is not required. For the purposes of this paragraph, a financial report means that profit and loss have been determined after the closure of interim accounts or annual accounts in accordance with the accounting framework.

36. The provisions of the above paragraphs apply in the same way to gains and losses included in other accumulated comprehensive income.

37. For the purposes of paragraph 30, sub-paragraph 2), banks shall determine the amount of intangible assets to be deducted, as follows:

1) the amount to be deducted shall be reduced by the amount of deferred tax liability that would cease if intangible assets would depreciate or be derecognized in accordance with the accounting framework;

2) the amount to be deducted consists of the goodwill included in the significant investment valuation of the bank;

3) the amount to be deducted shall be reduced by the amount related to the accounting revaluation of the intangible assets of the subsidiaries following the consolidation of the subsidiaries, attributable to persons other than the undertakings included in the consolidation according to the Regulation on the supervision of banks on a consolidated basis, approved by the Decision of the Executive Board of the National Bank of Moldova No 101 of 16 April 2020 (hereinafter referred to as "Regulation No 101/2020").

[Par. 37 supplemented by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

Subsection 3

Deduction of deferred tax assets that rely on future profitability

38. For the purposes of paragraph 30, sub-paragraph 3), banks shall determine the amount of deferred tax assets that rely on future profitability to be deducted in accordance with paragraphs 39-45.

39. Unless the conditions in paragraph 40 are met, the amount of deferred tax assets that rely on future profitability shall be calculated without deducting the amount of deferred tax liability of the bank.

40. The amount of deferred tax assets that rely on future profitability may be reduced by the amount of deferred tax liability of the bank, if the following conditions are met:

1) the entity has a legal right to offset the respective current tax liabilities with current tax liabilities;

2) the respective deferred tax assets and deferred tax liabilities relate to taxes levied by the same tax authority and on the same taxable entity.

41. Related deferred tax liabilities of the bank used within the meaning of paragraph 40 may not include deferred tax liabilities that reduce the amount of intangible assets or assets of the defined benefit pension fund to be deducted.

42. The amount of deferred tax liability referred to in paragraph 41 shall be distributed between:

1) deferred tax assets that rely on future profitability and result from temporary differences that are not deducted in accordance with paragraph 63;

2) all other deferred tax assets that rely on future profitability.

43. Banks allocate associated deferred tax liabilities in proportion to deferred tax assets that rely on future profitability accounting for the items in paragraph 42.

44. Compensation between deferred tax assets and related deferred tax liabilities is separately recognized for each taxable entity.

45. The amount of deferred tax liabilities that are eligible for deferred tax assets deferral that rely on future profitability is the difference between the amount of deferred tax liabilities recognized in accordance with the provisions of the accounting framework and the amount of deferred tax liability arising from intangible assets and the assets of the defined benefit pension fund.

Subsection 4

Excess tax payments, tax losses carried forward to previous years and deferred tax assets that do not rely on future profitability

46. The following items shall not be deducted from own funds and shall be subject to the risk weight according to the Regulation on the treatment of banks' credit risk according to the

standardised approach, approved by the Decision of the Executive Board of the National Bank of Moldova No 111 of 24 May 2018 (hereinafter referred to as “Regulation No 111/2018”):

- 1) excess payments of taxes made by the bank for the current year;
- 2) tax losses of the bank for the current financial year transferred in the previous financial years which give rise to a claim on the central public administration authorities, the regional administration or on the tax authority of the Republic of Moldova.

[Par. 46 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

Subsection 5

Deduction of the assets of the defined benefit pension fund

47. For the purposes of paragraph 30, sub-paragraph 4), the amount of assets of the defined benefit pension fund to be deducted shall be reduced by:

- 1) the amount of any associated deferred tax liability that could be extinguished if the assets would depreciate or be derecognized in accordance with the accounting framework;
- 2) the amount of the defined benefit pension fund assets that the bank may use without restrictions, provided that the prior approval of the National Bank of Moldova is obtained.

48. The respective assets receive a risk weight in accordance with the Regulation No 111/2018.

49. The National Bank of Moldova grants such prior approval only if the unrestricted capacity to use those assets of the defined benefit pension fund implies immediate and unimpeded access to assets.

50. Access to assets is considered to be immediate and unrestricted when the use of assets is not prohibited by any restrictions and there are no claims by third parties on such assets and when the bank does not have to request and obtain specific approval from the pension fund manager or from the beneficiaries of the pension whenever they exercise their right of access to the surplus funds in the plan.

Subsection 6

Deduction of holdings of equity instruments of common equity Tier 1 capital

51. For the purpose of paragraph 30, sub-paragraph 5), the calculation of holdings of equity instruments of common equity Tier 1 capital shall be carried out by banks on the basis of long gross positions, with the following exceptions:

1) the calculation of the amount of holdings of equity instruments of common equity Tier 1 capital shall be based on the net long position provided that the following two conditions are met cumulatively:

- a) long and short positions are part of the same underlying exposure, and short positions do not involve any counterparty risk;
- b) either both long positions and short positions are held in the trading book, or both are held outside it;

2) banks shall determine the amount to be deducted for direct, indirect and synthetic index-based holdings of securities by calculating the underlying exposure to their equity instruments of common equity Tier 1 capital included in the respective indices;

3) banks can offset long gross positions on their equity instruments of common equity Tier 1 capital resulting from short-term index holdings of their equity instruments of common equity Tier 1 capital, resulting from short positions on underlying indexes, including where such short positions involve a counterparty risk, provided the cumulative fulfilment of the following two conditions is met:

- a) long and short positions are on the same underlying indices;
- b) either the long or the short positions are held in the trading book or both are held outside it.

Subsection 7

Significant investment in an entity of the financial sector

52. For the purpose of deducting holdings of equity instruments of common equity Tier 1 capital/equity of entities of the financial sector, a bank shall be deemed to have a significant investment in an entity of the financial sector, when at least one of the following conditions is met:

1) the bank owns more than 10% of the items of common equity Tier 1 capital/equity, as the case may be, issued by the respective entity;

2) the bank has close links with the respective entity and holds items of common equity Tier 1 capital/equity, as the case may be, issued by the respective entity;

3) the bank owns items of common equity Tier 1 capital/equity which are issued, if any, by the respective entity and the entity is not included in prudential consolidation but is included in the same accounting consolidation as the bank for financial reporting purposes.

53. In order to assess whether a bank has more than 10% of items of common equity Tier 1 capital/equity, as the case may be, issued by an entity of the financial sector, the bank shall sum up the amounts of gross direct holdings as well as indirect holdings of items of common equity Tier 1 capital of the respective entity of the financial sector referred to in paragraph 1, sub-paragraph 4)-5) of Annex 4.

Subsection 8

Deduction of holdings of instruments of common equity Tier 1 capital of entities of the financial sector

54. Banks operate the deductions referred to in paragraph 30, sub-paragraph 6), 7) and 8), if they hold a reciprocal cross holding, intended to increase artificially the own funds, in accordance with the following provisions:

1) holdings of instruments of common equity Tier 1 capital/equity, as appropriate, and other capital instruments of entities of the financial sector shall be calculated on the basis of long gross positions;

2) for the purpose of deduction, items of Tier 1 own funds/equity, as the case may be, specific to insurance corporations are treated as holdings of instruments of common equity Tier 1 capital.

55. Banks operate the deductions provided for in paragraph 30, sub-paragraphs 7) and 8), in accordance with the following provisions:

1) banks may calculate the direct, indirect and synthetic holdings of common equity Tier 1 capital/equity, as appropriate, of the entities of the financial sector on the basis of the long net position on the same underlying exposure provided that the following conditions are cumulatively met:

a) the maturity of the short position is the same as that of the long position or has a residual maturity of at least one year;

b) either the long and the short positions are held in the trading book, or both are held outside it;

2) banks shall determine the amount to be deducted for the direct, indirect and synthetic holdings of index-based securities by calculating the underlying exposure to the equity instruments of the entities of the financial sector included in those indices.

Subsection 9

Deduction of holdings of instruments of common equity Tier 1 capital when a bank does not have a significant investment in an entity of the financial sector

56. For the purposes of paragraph 30, sub-paragraph 7), banks shall calculate the applicable amount to be deducted by multiplying the amount referred to in sub-paragraph 1) of this paragraph by the factor derived from the calculation referred to in sub-paragraph 2):

1) the aggregate amount with which the bank's direct, indirect and synthetic holdings of instruments of common equity Tier 1 capital/equity, additional Tier 1 own funds instruments and Tier 2 own funds instruments of the entity of the financial sector in which the bank does not hold

a significant investment exceed 10% of the aggregate amount of the items of common equity Tier 1 capital calculated after the application of the following:

- a) paragraphs 26-29;
- b) deductions referred to in paragraph 30, sub-paragraphs 1) - 6), 10) and 11) except for the amount to be deducted for deferred tax assets that rely on future profitability arising from temporary differences;
- c) paragraphs 54 and 55;
- 2) the amount of the direct, indirect and synthetic holdings of instruments of common equity Tier 1 capital/equity, as applicable, of those entities of the financial sector where the bank does not have a significant investment divided by the aggregate amount of direct, indirect and synthetic holdings of instruments of common equity Tier 1 capital/equity, additional Tier 1 and Tier 2 own funds instruments of the respective entities of the financial sector.

57. Banks exclude underwriting positions held for five business days or less from the amount referred to in paragraph 56, sub-paragraph 1) and from the calculation of the factor referred to in sub-paragraph 2).

58. The amount to be deducted in accordance with paragraph 56 shall be distributed proportionately to all held instruments of common equity Tier 1 capital. Banks shall determine the amount of each common equity Tier 1 capital instrument that is deducted by multiplying the amount quoted in sub-paragraph 1) of this paragraph by the proportion referred to in sub-paragraph 2):

- 1) the amount of holdings to be deducted in accordance with paragraph 56;
- 2) the proportion of the aggregate amount of direct, indirect and synthetic holdings of common equity Tier 1 capital/equity instruments, as appropriate, of entities of the financial sector where the bank does not hold a significant investment represented by each held common equity Tier 1 capital instrument.

59. The amount of holdings referred to in paragraph 30, sub-paragraph 7), which is less than or equal to 10% of the items of common equity Tier 1 capital after application of the provisions of paragraph 56, sub-paragraph 1), shall not be deducted and subject to the risk weight applicable in accordance with the provisions of the Regulation No 111/2018 and Regulation No 114/2018, as the case may be.

[Par. 59 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

60. Banks shall determine the amount of each common equity Tier 1 capital/equity instrument as appropriate, that is risk-weighted under paragraph 59 multiplied by the amount of holdings to be risk-weighted in accordance with paragraph 59 with the proportion resulting from the calculation in paragraph 58, sub-paragraph 2).

61. When determining the applicable amount of holdings of common equity Tier 1 capital/equity instruments, as appropriate, to be deducted in accordance with the provisions of paragraph 30, sub-paragraph 7), banks may opt not to identify the separate goodwill.

Subsection 10

Deduction of holdings of common equity Tier 1 capital instruments when a bank has a significant investment in an entity of the financial sector. Exemptions and alternatives to the deduction from common equity Tier 1 capital items

62. For the purposes of paragraph 30, sub-paragraph 8), the applicable amount to be deducted from common equity Tier 1 capital items excludes the underwriting positions held for five business days or less, and shall be determined in accordance with paragraphs 54, 55 and paragraphs 63-67.

63. When making the deductions provided for in paragraph 30, sub-paragraphs 3) and 8), banks are not required to deduct the amounts of items listed in sub-paragraphs 1) and 2) of this paragraph, which if aggregated, are equal to or lower than the threshold mentioned in paragraph 64:

1) deferred tax assets that rely on future profitability arising from temporary differences and which, if aggregated, represent 10% or less of the items of common equity Tier 1 capital, calculated after applying the following:

a) paragraph 26-29;
b) paragraph 30, sub-paragraph 1) - 7), 10) - 11), except for deferred tax assets that rely on future profitability and result from temporary differences.

2) if a bank has a significant investment in an entity of the financial sector, the direct, indirect and synthetic holdings of the respective bank of common equity Tier 1 capital/equity instruments as appropriate, which, if aggregate, represent 10% or less from the items of common equity Tier 1 capital, calculated after applying the following:

a) paragraph 26-29;
b) paragraph 30, sub-paragraphs 1) - 7), 10) - 11), except for deferred tax assets that rely on future profitability and result from temporary differences.

64. For the purposes of paragraph 63, the threshold amount shall be equal to the amount referred to in sub-paragraph 1 of this paragraph multiplied by the percentage referred to in sub-paragraph 2:

1) the residual amount of common equity Tier 1 capital items, after applying all adjustments and deductions in paragraphs 26-30 and without applying the threshold exemptions in paragraph 63;

2) 17.65%.

65. For the purposes of paragraph 63, banks shall determine the proportion of deferred tax assets from the total amount of items that should not be deducted by dividing the amount referred to in sub-paragraph 1 of this paragraph by the amount referred to in sub-paragraph 2:

1) the amount of deferred tax assets that rely on future profitability arising from temporary differences and which aggregate represents 10% or less of the common equity Tier 1 capital items of the bank;

2) amount of the following items:

a) the amount referred to in sub-paragraph 1;
b) the amount of direct, indirect and synthetic holdings of own funds/equity instruments, as appropriate, of entities of the financial sector where the bank has a significant investment, which, if aggregate, represents 10% or less than the common equity Tier 1 capital items of the bank.

66. The proportion of significant investments in the total amount of items that should not be deducted is equal to one minus the proportion referred to in paragraph 65.

67. The amounts of items not deducted in accordance with paragraph 63 shall be assigned a risk weight of 250%.

Chapter IV

ADDITIONAL TIER 1 OWN FUNDS

Section 1

Additional Tier 1 own funds items

68. Additional Tier 1 own funds items consist of:

1) equity instruments, including preference shares, if the conditions set out in paragraph 70 are met;

2) related share premium accounts for the instruments referred to in sub-paragraph 1).

69. Instruments included in paragraph 68, sub-paragraph 1) do not qualify as common equity Tier 1 capital items or Tier 2 own funds items.

Section 2

Additional Tier 1 own funds instruments

70. Equity instruments qualify as additional Tier 1 instruments only if the following conditions are met cumulatively:

- 1) instruments are issued and paid;
- 2) instruments are not purchased by:
 - a) bank or its subsidiaries;
 - b) an undertaking in which the bank holds an interest consisting of direct or controlled holding of at least 20% of the voting rights or capital of the undertaking concerned;
- 3) the purchase of instruments is not directly or indirectly financed by the bank;
- 4) instruments are ranked inferior to Tier 2 own funds instruments in case of bank liquidation;
- 5) the instruments are not secured and are not the subject of a guarantee increasing the level of priority of payment of claims from either of the following:
 - a) bank or its subsidiaries;
 - b) parent undertaking of the bank and its subsidiaries;
 - c) the parent financial holding company or its subsidiaries;
 - d) the mixed-activity holding company or its subsidiaries;
 - e) mixed financial holding company or its subsidiaries;
 - f) any undertaking which has close links with the entities referred to in letters (a) to (e);
- 6) the instruments are not subject of any contractual, or other, provision that increases the priority of payment of claims under instruments in case of insolvency or liquidation;
- 7) the instruments are perpetual and the provisions governing them do not include any redemption incentive for the bank;
- 8) if the provisions regulating instruments include one or more purchase options, the option may be exercised at the sole discretion of the issuer;
- 9) the exercise of purchase options and/or the repayment or redemption of instruments may be exercised only if the conditions set out in paragraph 119 and not less than five years from the date of issuance are met, unless the conditions of paragraph 123 are met;
- 10) the provisions regulating the instruments do not explicitly or implicitly indicate that the options to buy will or may be exercised and the instruments will be or may be repaid or redeemed and the bank makes no further mention of it except in the following cases:
 - a) liquidation of the bank;
 - b) discretionary redemption of instruments (purchase of shares) or other discretionary means of diminishing the amount of additional Tier 1 own funds from the capital if the bank has obtained the prior approval of the National Bank of Moldova in accordance with paragraph 119;
- 11) the bank does not explicitly or implicitly state that the National Bank of Moldova would accept an application to exercise the options of buying and repaying or redeeming the instruments;
- 12) instrument-based distributions meet the following conditions:
 - a) are paid from the items that can be distributed;
 - b) the level of distributions related to the instruments will not be altered based on the credit quality of the bank or its parent undertaking;
 - c) the provisions regulating the instruments confer on the bank exclusive jurisdiction at any time to cancel the distributions of the instruments for an unlimited period, non-cumulative basis and the bank may use the cancelled distributions without restriction in order to fulfil its obligations as they become due;
 - d) cancelling distributions is not a default for the bank;
 - e) cancelling distributions does not impose restrictions on the bank;
- 13) the instruments do not contribute to establishing that the debts of a bank exceed its assets, calculated to determine the over-indebtedness of the bank under the conditions of Article 22, paragraph (2), letter (b) of Law No 202 of 6 October 2017 on the activity of banks;
- 14) the provisions regulating the instruments require that, when a triggering event occurs, the amount of the principal instruments be reduced permanently or temporarily or that the instruments are converted into common equity Tier 1 capital instruments;
- 15) the provisions regulating the instruments do not include provisions that could prevent the recapitalization of the bank. Features that could prevent the recapitalization of the bank include

provisions requiring the bank to provide compensation to existing holders of equity instruments when a new equity instrument is issued;

16) if instruments are not issued directly by the bank, the following two conditions are met cumulatively:

- a) instruments are issued through an entity included in prudential consolidation;
- b) that bank may immediately dispose of the proceeds generated by those instruments without restriction and in a form which satisfies the conditions set out in this paragraph.

71. For the purposes of paragraph 70, sub-paragraph 7) and paragraph 97, sub-paragraph 8), redemption incentives mean all features that provide, at the issuance date, the expectation that the equity instrument could be redeemed and include at least the following forms:

- 1) a purchase option linked to an obligation or an option of an investor to convert the instrument into a common equity Tier 1 capital instrument if the option to purchase is not exercised;
- 2) a purchase option correlated with an increase in future redemption value;
- 3) trading the instrument in a way that suggests to investors that the instrument will be subject to the exercise of a purchase option.

72. For the purposes of paragraph 70, sub-paragraph 12), letter (e) and sub-paragraph 15), the provisions regulating additional Tier 1 instruments do not include in the present case the following:

- 1) the obligation to distribute instruments in the case of a distribution associated with an instrument issued by the bank that is of the same rank or a rank lower than an additional Tier 1 own funds instrument including common equity Tier 1 capital instrument;
- 2) the obligation to cancel the distributions of common equity Tier 1 capital instruments, additional Tier 1 own funds instruments or Tier 2 own funds instruments in the event that no distributions are made to those additional Tier 1 own funds instruments;
- 3) the obligation to replace the payment of interest or dividends with a payment in any other form. The bank should not be subject to such an obligation in any other way.

Section 3

Reducing the value or conversion of additional Tier 1 own funds instruments

73. For the purposes of paragraph 70, sub-paragraph 14), the additional Tier 1 own funds instruments shall be applied the following provisions:

- 1) a triggering event occurs when the rate of common equity Tier 1 capital referred to in paragraph 130, paragraph 1) falls below one of the following thresholds:
 - a) 6.5 %;
 - b) a level higher than 6.5% set by the bank and specified in the provisions regulating the instrument;
- 2) banks may specify in the provisions regulating the instrument one or more triggering events in addition to the one referred to in sub-paragraph 1;
- 3) where the provisions regulating the instruments require them to be converted into common equity Tier 1 capital instruments when a triggering event occurs, the respective provisions shall specify any of the following:
 - a) the rate used for this conversion and a limit on the permissible conversion rate;
 - b) the period within which instruments shall be converted into common equity Tier 1 capital instruments;
 - c) if the provisions regulating instruments provide for a reduction in the principal amount at the time when a triggering event occurs, the reduction shall apply in all the following cases:
 - a) the claim of the holder of instrument in case of bank liquidation;
 - b) the amount to be paid for exercising the option to buy or redeem the instrument;
 - c) distributions made in respect of the instrument.

74. Reducing or converting an additional Tier 1 own funds instrument, in accordance with the accounting framework, shall generate items that qualify as common equity Tier 1 capital items.

75. The amount of the additional Tier 1 own funds instruments included in the additional Tier 1 own funds items shall be limited to the minimum amount of common equity Tier 1 capital items that would arise if the amount of the principal additional Tier 1 own funds instruments would be fully reduced or converted into common equity Tier 1 capital instruments.

76. The aggregate amount of additional Tier 1 own funds instruments that need to be lowered or converted at the time of triggering event is at least equal to the lowest amount of the following:

- 1) the amount necessary to restore in full the common equity Tier 1 capital ratio of the bank to 6.5%;
- 2) the full amount of the principal instrument.

77. When the triggering event occurs, the banks shall proceed as follows:

- 1) immediately inform the National Bank of Moldova, but not later than 3 days from the date of the triggering event;
- 2) promptly inform the holders of additional Tier 1 own funds instruments;
- 3) reduce the amount of the principal instruments or convert the instruments into common equity Tier 1 capital instruments without delay but no later than one month in accordance with the requirements of this Section.

78. A bank shall ensure that it has at all times sufficient share capital to convert all additional Tier 1 own funds convertible instruments into common equity Tier 1 capital instruments in the event of a triggering event.

79. A bank that issues additional Tier 1 own funds instruments that are converted into common equity Tier 1 capital instruments when a triggering event occurs, ensures that there are no obstacles for that conversion, including by virtue of its articles of association or its statute or any contractual arrangement.

80. For the purposes of paragraph 70, sub-paragraph 14), the write-down of the principal shall apply proportionately to all holders of additional Tier 1 own funds instruments, which include a similar reduction mechanism and an identical triggering level.

81. In order for the reduction in value to be considered temporary, all the listed conditions must be met:

- 1) payment distributions after a reduction in value are based on the reduced principal amount;
- 2) value increases are based on profit after the final decision of the bank on the confirmation of final profit;
- 3) any increase in the instrument or the payment of coupons from the reduced amount of the principal shall be made at the full discretion of the bank subject to the provisions of paragraphs 4) – 6), and the bank is under no obligation to make or accelerate an increase under certain conditions;
- 4) an increase shall be made on a pro-rata basis between the same additional Tier 1 own funds instruments that have been subject to a reduction;
- 5) the maximum amount attributable to the increased amount of the instrument together with the payment of the coupon related to the reduced principal amount is equal to the profit of the bank, multiplied by the amount obtained by dividing the amount set out in letter a) by the amount set out in letter b):

a) the amount of the nominal value of all of the additional Tier 1 own funds instruments of the bank prior to the reduction that has been subject to the write-down;

b) total Tier 1 own funds of the bank;

6) the amount of the reduced amount and coupon payments from the reduced principal amount is treated as a payment that leads to a reduction in common equity Tier 1 capital and, together with other distributions related to the common equity Tier 1 capital instruments, is subject to restrictions on the maximum amount to be distributed according to the Regulation on capital buffers of banks, approved by the Decision of the Executive Board of the National Bank of Moldova No 110 of 24 May 2018 (hereinafter referred to as “Regulation No 110/2018”).

[Par. 81 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

82. For the purposes of paragraph 81, sub-paragraph 5), the calculation is made when the increase in value is recorded.

83. If the bank has determined that the rate of common equity Tier 1 capital instruments has fallen below the level triggering the conversion or reduction in the value of an instrument, the management body or any other relevant body of the bank shall establish without delay that a triggering event occurred and that there is an irrevocable obligation to reduce the value of the instrument or to convert it.

84. The amount to be reduced or converted shall be determined as soon as possible and within a maximum of one month from the date on which it is determined that the triggering event occurred. The National Bank of Moldova may require that this maximum period be reduced in cases where it estimates that there is sufficient certainty as to the amount to be converted or reduced, or where it estimates that the value is immediately converted or reduced.

85. Where, in accordance with the provisions governing the additional Tier 1 own funds instrument, an independent review of the amount to be reduced or converted is required or where the National Bank of Moldova requires an independent review to determine the value that must be reduced or converted, the management body or any other relevant body of the bank must ensure that this is done immediately. The independent review should be completed as soon as possible and should not create any impediment for the bank to reduce or convert the additional Tier 1 own funds instrument and meet the requirements set out in paragraph 84.

Section 4

Consequences of ceasing to meet the conditions for additional Tier 1 own funds instruments

86. Where an additional Tier 1 own funds instrument no longer meets the conditions set out in paragraph 70, the following provisions shall apply:

- 1) that instrument shall immediately cease to qualify as an additional Tier 1 own funds instrument;
- 2) the portion of the related share premium accounts for that instrument immediately ceases to qualify as an additional Tier 1 own funds item.

Section 5

Deductions from additional Tier 1 own funds items

87. Banks deduct from the following additional Tier 1 own funds items:

- 1) a bank's direct, indirect and synthetic holdings of additional Tier 1 own funds instruments, including additional Tier 1 own funds instruments that a bank may be required to acquire as a result of existing contractual obligations;
- 2) the direct, indirect and synthetic holdings of additional Tier 1 own funds instruments of entities of the financial sector with which the bank holds reciprocal cross holdings which, in the opinion of the National Bank of Moldova, were designed to artificially increase the equity of the bank;
- 3) the applicable amount determined in accordance with paragraphs 91-95 of the direct, indirect and synthetic holdings of additional Tier 1 own funds instruments of entities of the financial sector, where a bank does not have a significant investment in those entities;
- 4) a bank's direct, indirect and synthetic holdings of additional Tier 1 own funds instruments of the entities of the financial sector where the bank has a significant investment in these entities, except for the underwriting positions held for five business days or less;
- 5) the amount of items to be deducted from Tier 2 own funds items in accordance with paragraph 100, which exceeds the Tier 2 own funds of the bank;
- 6) any tax on additional Tier 1 own funds items foreseeable at the time of its calculation, unless the bank adjusts the amount of additional Tier 1 own funds items accordingly to the extent that such taxes reduce the amount to which these items may be allocated to cover risks or losses.

88. For the purposes of paragraph 87, sub-paragraph 1), banks shall calculate holdings of additional Tier 1 own funds instruments on the basis of long gross positions, with the following exceptions:

1) banks may calculate the amount of holdings of additional Tier 1 own funds instruments on the basis of their long net position provided that the following two conditions are met cumulatively:

a) long and short positions are part of the same underlying exposure, and short positions do not involve any counterparty risk;

b) either both long positions and short positions are held in the trading book, or both are held outside it;

2) banks determine the amount to be deducted for the direct, indirect or synthetic holdings of index-based securities by calculating the underlying exposure to their additional Tier 1 own funds instruments included in those indices;

3) banks can offset long gross positions on additional Tier 1 own funds instruments resulting from short-term securities based on short-term index on additional Tier 1 own funds instruments resulting from short positions on underlying indexes, including when these short positions involve a counterparty risk, provided the cumulative fulfilment of the following two conditions is met:

a) long and short positions are on the same underlying indices;

b) both long and short positions are held in the trading book or both are held outside it.

89. Banks operate the deductions provided in paragraph 87, sub-paragraph 2), 3) and 4) if they hold a reciprocal cross holding, intended to artificially increase own funds, in accordance with the following:

1) holdings of additional Tier 1 own funds instruments are calculated on the basis of long gross positions;

2) for the purpose of deduction, additional Tier 1 own funds items specific to insurance undertakings/insurance companies are treated as holdings of additional Tier 1 own funds instruments.

90. Banks operate the deductions provided in paragraph 87, sub-paragraph 3) and 4) in accordance with the following:

1) banks may calculate the direct, indirect and synthetic holdings of additional Tier 1 own funds instruments of entities of the financial sector on the basis of long net position on the same underlying exposure provided that the following two conditions are met cumulatively:

a) the maturity of the short position is the same as that of the long position or has a residual maturity of at least one year;

b) both long positions and short positions are held in the trading book, or both are held outside it;

2) banks shall determine the amount to be deducted for the direct, indirect and synthetic holdings of index-based securities by calculating the underlying exposure to the equity instruments of entities of the financial sector included in those indices.

Section 6

Deduction of holdings of additional Tier 1 own funds instruments

if a bank does not have a significant investment in an entity of the financial sector

91. For the purposes of paragraph 87, sub-paragraph 3), banks shall calculate the applicable amount to be deducted by multiplying the amount referred to in sub-paragraph 1) of this paragraph by the factor derived from the calculation referred to in sub-paragraph 2):

1) the aggregate amount with which direct, indirect and synthetic bank holdings of common equity Tier 1 capital instruments, additional Tier 1 own funds instruments and Tier 2 own funds instruments of entities of the financial sector in which the bank does not have a significant investment exceeds 10% of the common equity Tier 1 capital of the bank, calculated after applying:

a) paragraphs 26-29;

b) paragraph 30, sub-paragraphs 1) – 6), 10) and 11), with the exception of deferred tax assets that rely on future profitability and result from temporary differences;

c) paragraphs 54 and 55;

2) the amount of direct, indirect, and synthetic holdings by the bank of additional Tier 1 own funds instruments of entities of the financial sector in which the bank does not have a significant investment divided by the aggregate amount of all direct, indirect, and synthetic holdings of the common equity Tier 1 capital instruments, additional Tier 1 own funds instruments and Tier 2 own funds instruments of the respective entities of the financial sector.

92. Banks exclude underwriting positions held for five business days or less from the amount referred to in paragraph 1, sub-paragraph 1) and from the calculation of the factor referred to in paragraph 91, sub-paragraph 2).

93. The amount to be deducted in accordance with paragraph 91 shall be distributed proportionately to all additional Tier 1 own funds instruments. Banks shall determine the amount of each additional Tier 1 own funds instrument to be deducted by multiplying the amount referred to in sub-paragraph 1) of this paragraph by the proportion referred to in sub-paragraph 2):

1) the amount of holdings to be deducted in accordance with paragraph 91;

2) the proportion of the aggregate amount of the bank's direct, indirect, and synthetic holdings of common equity Tier 1 capital instruments of entities of the financial sector where the bank does not have a significant investment represented by each additional Tier 1 own funds instrument.

94. The amount of holdings referred to in paragraph 3, sub-paragraph 3) that is less than or equal to 10% of the common equity Tier 1 capital items of the bank after application of the provisions of paragraph 91, sub-paragraph 1) shall not be deducted and subject to the risk weight applied in accordance with the requirements of the Regulation No 111/2018 and Regulation No 114/2018, as appropriate.

[Par. 94 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

95. Banks shall determine the amount of each additional Tier 1 own funds instrument that is risk-weighted under paragraph 94, by multiplying the amount of holdings to be risk-weighted under paragraph 94 by the proportion resulting from the calculation in paragraph 93, paragraph 2).

Chapter V **TIER 2 OWN FUNDS**

Section 1 **Tier 2 own funds items**

96. Tier 2 own funds items consist of:

1) capital instruments, including preference shares, which do not have the conversion clause in common equity Tier 1 capital instruments and subordinated loans if the conditions set out in paragraph 97 are met;

2) the related share premium accounts for the instruments referred to in sub-paragraph 1);

3) general credit risk adjustments, before taxation, of up to 1.0% of the risk-weighted exposure amounts calculated in accordance with the Regulation No 111/2018.

Section 2 **Tier 2 own funds instruments**

97. Subordinated capital and debt instruments qualify as Tier 2 own funds instruments if the following conditions are met:

1) instruments are issued or, as the case may be, subordinated debts are obtained and paid in full;

2) instruments are not acquired or, where appropriate, subordinated debt is not granted by any of the following:

a) bank and its subsidiaries;

b) an undertaking in which the bank holds an interest consisting of direct or controlled holding of at least 20% of the voting rights or capital of the respective undertaking;

3) the purchase of instruments or, where appropriate, granting of subordinated loans are not directly or indirectly financed by the bank;

4) the claim on the principal instrument under the provisions regulating the instruments or, where applicable, the claim on the principal subordinated loans under the provisions regulating subordinated debts is entirely subordinated to the claims of all non-subordinated creditors;

5) instruments or, where appropriate, subordinated debt are not secured and are not the subject of a guarantee increasing the priority of payment of claims from any of the following:

a) bank or its subsidiaries;

b) parent undertaking of the bank and its subsidiaries;

c) the parent financial holding company or its subsidiaries;

d) the mixed-activity holding company or its subsidiaries;

e) mixed financial holding company or its subsidiaries;

f) any undertaking which has close links with the entities referred to in letters (a) to (e);

6) instruments or, where appropriate, subordinated debt are not subject to any provision increasing the level of priority of payment of claims under instruments or subordinated debt respectively;

7) instruments or, where appropriate, subordinated debt have an initial maturity of at least five years;

8) the provisions regulating instruments or, where appropriate, subordinated debt do not include any incentive for the repayment or, as the case may be, the redemption of the principal's amount by the bank before maturity;

9) where instruments or, where appropriate, subordinated debts include one or more options to buy or repay in advance, as the case may be, options are exercised at the sole discretion of the issuer or the debtor, as the case may be;

10) instruments, or, where appropriate, subordinated debts may be repaid, redeemed or reimbursed, or the related purchase options may be exercised in advance only if the conditions set out in paragraph 119 are met, and not earlier than five years from the date of issuance or, as the case may be, unless the conditions in paragraph 123 are met;

11) the provisions regulating the instruments or, where appropriate, the subordinated debts do not explicitly or implicitly indicate that instruments or subordinated debts, as the case may be, will be or could be repaid, redeemed, reimbursed, or the related purchase options may be exercised in advance, by the bank in other cases than the liquidation of the bank, and it does not make any other entries in this respect;

12) the provisions regulating the instruments or, where appropriate, subordinated debts do not give the holder or, where appropriate, the lender the right to accelerate future scheduled interest or principal payments, unless the bank is liquidated without changing the order of priority of the consideration;

13) the level of interest or dividend payments, as appropriate, of instruments or, where appropriate, of subordinated loans will not be altered on the basis of the rating of the bank or its parent undertaking.

14) if the instruments are not issued directly by a bank or, where applicable, if the subordinated debt is not directly obtained by a bank, the following two conditions are cumulatively met:

a) instruments are issued or, where appropriate, subordinated debt is obtained through an entity that is not included in prudential consolidation;

b) the respective bank may immediately dispose of the proceeds generated by these instruments without restriction and in a form which satisfies the conditions set out in this paragraph.

98. The extent to which Tier 2 own funds instruments qualify as Tier 2 own funds items during the last five years prior to the maturity of instruments shall be calculated by multiplying the

result of the calculation under sub-paragraph 1) by the amount quoted in sub-paragraph 2), as follows:

1) the nominal amount of instruments or, where applicable, subordinated loans on the first day of the last five years prior to the contractual maturity, divided by the number of calendar days in the respective period;

2) the number of remained calendar days until the contractual maturity of the subordinated instruments or loans.

Section 3

Consequences of ceasing to fulfil the conditions for Tier 2 own funds instruments

99. Where a Tier 2 own funds instrument no longer meets the conditions set out in paragraph 97, the following provisions shall apply:

1) the respective instrument shall immediately cease to qualify as Tier 2 own funds instrument;

2) the portion of the related share premium accounts for that instrument shall cease immediately to qualify as a Tier 2 own funds item.

Section 4

Deductions from Tier 2 own funds items

100. From Tier 2 own funds items, the following are deducted:

1) direct, indirect and synthetic holdings of Tier 2 own funds instruments, including Tier 2 own funds instruments that a bank may be required to acquire as a result of existing contractual obligations;

2) the direct, indirect and synthetic holdings of Tier 2 own funds instruments of entities of the financial sector with which the bank holds reciprocal cross holdings which, in the opinion of the National Bank of Moldova, were designed to increase artificially the equity of the bank;

3) the applicable amount determined in accordance with paragraphs 105 to 109 of the direct, indirect and synthetic holdings of Tier 2 own funds instruments of entities of the financial sector where the bank does not have a significant investment in those entities;

4) the direct, indirect and synthetic holdings of Tier 2 own funds instruments of entities of the financial sector where the bank has a significant investment in these entities, except for underwriting positions held for less than five business days.

101. If the amount of deductions in accordance with paragraph 100 exceeds the Tier 2 own funds, that amount shall be deducted from the level of additional Tier 1 own funds.

102. For the purposes of paragraph 100, sub-paragraph 1), banks shall calculate holdings on the basis of long gross positions, with the following exceptions:

1) banks may calculate the amount of holdings on the basis of the long net position provided that the following two conditions are cumulatively met:

a) long and short positions are part of the same underlying exposure, and short positions do not involve any counterparty risk;

b) either both long and short positions are held in the trading book or both are held outside it.

2) banks determine the amount to be deducted for the direct, indirect and synthetic holdings of index-based securities by calculating the underlying exposure to their own Tier 2 own funds instruments included in those indices;

3) banks can offset long gross positions on Tier 2 own funds instruments resulting from index holdings with short positions on their Tier 2 own funds instruments resulting from short positions on underlying indexes, where such short positions involve a counterparty risk, provided the cumulative fulfilment of the following two conditions is met:

a) long and short positions are part of the same underlying index;

b) either both long and short positions are held in the trading book or both are held outside it.

103. Banks operate the deductions under paragraph 100, sub-paragraph 2), 3) and 4) in accordance with the following provisions:

- 1) holdings of Tier 2 own funds instruments are calculated on the basis of long gross positions;
- 2) for the purpose of the deduction, holdings of Tier 2 own funds items specific to insurance companies/undertakings and Tier 3 own funds items specific to insurance companies/undertakings are treated as Tier 2 own funds instruments holdings.

104. Banks operate the deductions provided in paragraph 100, sub-paragraph 3) and 4), in accordance with the following provisions:

1) banks may calculate the direct, indirect and synthetic holdings of Tier 2 own funds instruments of entities of the financial sector on the basis of their long net position on the same underlying exposure provided that the following two conditions are met cumulatively:

a) the maturity of the short position is the same as that of the long position or has a residual maturity of at least one year;

b) either both the long and the short positions are held in the trading book, or both are held outside it;

2) banks shall determine the amount to be deducted for direct, indirect and synthetic holdings of index-based securities by examining the underlying exposure to the equity instruments of entities of the financial sector included in the respective indices.

Section 5

Deduction of Tier 2 own funds instruments

if a bank does not have a significant investment in a relevant entity

105. For the purposes of paragraph 100, sub-paragraph 3), banks shall calculate the applicable amount to be deducted by multiplying the amount referred to in sub-paragraph 1) of this paragraph by the factor derived from the calculation referred to in sub-paragraph 2):

1) the aggregate amount with which the direct, indirect, and synthetic holdings of the bank, common equity Tier 1 capital instruments, additional Tier 1 own funds instruments, and Tier 2 own funds instruments of entities of the financial sector in which the bank does not have a significant investment exceed 10% of the common equity Tier 1 capital items of the bank, calculated after applying the following:

a) paragraphs 26-29;

b) paragraph 30, sub-paragraphs 1) – 6), 10) – 11) with the exception of the amount to be deducted from deferred tax assets that rely on future profitability and result from temporary differences;

c) paragraphs 54-55.

2) the amount of the direct, indirect, and synthetic holdings of Tier 2 own funds instruments of entities of the financial sector in which the bank does not have a significant investment divided by the aggregate amount of the bank's direct, indirect, and synthetic holdings of common equity Tier 1 capital instruments and Tier 2 own funds instruments of respective entities of the financial sector.

106. Banks exclude underwriting positions held for five business days or less from the amount referred to in paragraph 105, sub-paragraph 1) and from the calculation of the factor referred to in sub-paragraph 2).

107. The amount to be deducted in accordance with paragraph 105 is proportionate for each Tier 2 own funds instrument held. Banks shall determine the amount to be deducted from each Tier 2 own funds instrument that is deducted under paragraph 105 by multiplying the amount referred to in sub-paragraph 1) of this paragraph by the proportion referred to in sub-paragraph 2):

1) the total amount of holdings to be deducted in accordance with paragraph 105;

2) the proportion of the aggregate amount of the bank's direct, indirect, and synthetic holdings of Tier 2 own funds instruments of entities of the financial sector in which the bank does not have a significant investment represented by each Tier 2 own funds instrument.

108. The amount of holdings referred to in paragraph 100, sub-paragraph 3) which is less than or equal to 10% of the common equity Tier 1 capital items of the bank after applying the provisions

of paragraph 104, sub-paragraph 1) shall not be deducted and shall be subject to the risk weight applied in accordance with Regulation No 111/2018 and Regulation No 114/2018, as the case may be.

[Par. 108 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

109. Banks shall determine the amount of each Tier 2 own funds instrument that is risk-weighted under paragraph 108, multiplying the amount quoted in sub-paragraph 1) of this paragraph by the amount quoted in sub-paragraph 2):

- 1) the amount of holdings to be risk-weighted in accordance with paragraph 108;
- 2) the proportion resulting from the calculation in paragraph 107, sub-paragraph 2).

Chapter VI GENERAL REQUIREMENTS

Section 1

Distributions related to own funds instruments

110. Equity instruments for which a bank has the discretion to decide to pay distributions in a form other than cash or an equity instrument cannot be considered as common equity Tier 1 capital instruments, additional Tier 1 own funds instruments or Tier 2 own funds instruments, unless the bank has obtained prior approval from the National Bank of Moldova for this purpose.

111. The National Bank of Moldova grants the approval referred to in paragraph 110 only when it considers that the following conditions are met:

- 1) the ability of the bank to cancel payments under the instrument would not be adversely affected by the capacity referred to in paragraph 110 or the form in which distributions could be made;
- 2) the capacity of the loss absorbing instrument would not be adversely affected by the capacity referred to in paragraph 110 or the form in which distributions could be made;
- 3) the quality of the capital instrument would not be reduced in any other way by the capacity referred to in paragraph 110 or by the form in which the distributions could be made.

112. Equity instruments for which a legal entity, other than the issuing bank, has the discretion to decide or require that distributions relating to the instrument be made in a form other than cash or an own funds instrument cannot be considered as common equity Tier 1 capital instruments, additional Tier 1 own funds instruments or Tier 2 own funds instruments.

113. Banks can use a general market index as a starting point for determining the level of distributions for additional Tier 1 own funds and Tier 2 own funds instruments.

114. The provision of paragraph 113 does not apply if the bank is a reference entity for that general index of the market, unless the following two conditions are cumulatively met:

- 1) the bank considers that the variations in the overall index of the market are not materially correlated with the credit quality of the bank, parent institution, parent financial holding company, mixed financial holding company or parent mixed company;
- 2) the National Bank of Moldova did not make a different determination than the one stipulated in sub-paragraph 1).

115. Banks report and publish the general market indices on which their capital instruments are based.

116. For the purposes of paragraph 113, a general market benchmark may be considered to be the benchmark interest rate on the interbank market (CHIBOR) established in accordance with the regulatory acts of the National Bank of Moldova and/or a stock index if it is diversified in accordance with the Regulation No 114/2018 and/or another benchmark established by the National Bank of Moldova.

Section 2 Other requirements on deductions

117. Banks shall not deduct from any item of own funds the direct, indirect or synthetic holdings of equity instruments issued by a regulated entity of the financial sector that does not qualify as regulated capital of that entity. Banks apply a risk weight to these holdings in accordance with the provisions of the Regulation No 111/2018.

118. The maturity requirements for short positions referred to in paragraph 55, sub-paragraph 1), paragraph 90, sub-paragraph 1) and paragraph 104, sub-paragraph 1) are deemed to be met in the case of positions held subject to the following conditions:

1) the bank has the contractual right to sell to the counterparty that provides coverage, at a precise future date, the long position that is covered;

2) the counterparty providing the coverage of the bank is contractually required to acquire the long position referred to in sub-paragraph 1) at that future date.

Section 3

Conditions for diminishing the own funds and prior approval of the National Bank of Moldova

119. A bank shall request the prior approval of the National Bank of Moldova before carrying out any of the following actions:

1) reduce, repay or redeem the common equity Tier 1 capital instruments issued in a manner that is permitted under the capital market legislation, including where the own funds instruments are transferred to the employees of the bank as part of their remuneration; and/or

2) purchase, reimburse, repay, or redeem the additional Tier 1 own funds instruments or Tier 2 own funds instruments, as appropriate, before their contractual maturity date.

120. The National Bank of Moldova grants a bank approval to reduce, redeem or repay basic Tier 1 own funds instruments, additional Tier 1 own funds instruments and Tier 2 own funds instruments or to exercise call options, including by replacing them with other own funds instruments, if the bank has demonstrated to the National Bank of Moldova, and the National Bank of Moldova considers, based on the available information, that:

1) the mentioned operation will not endanger the stability of the bank; and

2) following the respective operation, the bank's own funds will satisfy the own funds requirements provided by this Regulation, including the additional own funds requirements imposed by the National Bank of Moldova pursuant to Art. 139 paragraph (5) of Law No 202 of 6 October 2017 on the activity of banks, as well as the combined buffer requirement established in the Regulation No 110/2018; and

3) the mentioned operation will not lead to the non-observance of other prudential indicators.

In case of replacing the basic Tier 1 own funds instruments, the additional Tier 1 own funds instruments and the Tier 2 own funds instruments with other own funds instruments, when assessing the impact of the respective operation on the bank's stability, it will be considered whether the respective replacement is in sustainable conditions, taking into account the bank's capacity to obtain income.

[Par.120 in the wording of NBM Decision No 161 of 26 August 2021, in force from 10 October 2021]

121. Sustainable conditions for the capacity of the bank to earn revenue means that the profitability of the bank as assessed by the National Bank of Moldova remains robust or does not suffer negative changes after the instruments mentioned in paragraph 120 have been replaced by other equity instruments, at that date and in the near future. This assessment shall take into account the profitability of the bank in crisis situations.

[Par.121 amended by NBM Decision No 161 of 26 August 2021, in force from 10 October 2021]

122. When assessing the viability of replacement instruments in relation to the capacity of the bank to earn revenues, the National Bank of Moldova shall examine the extent to which those equity replacement instruments would be more expensive for the bank than those to be replaced.

123. The National Bank of Moldova may allow banks to redeem their additional Tier 1 own funds instruments or Tier 2 own funds instruments up to five years from the date of issuance only if the conditions set out in paragraph 120 and those specified below are met:

1) there is a change in the classification from the point of view of the prudential regulation of the instruments that could lead to their exclusion from the own funds category or to their reclassification as a form of own funds of inferior quality and the following conditions are cumulatively met:

a) the National Bank of Moldova considers such a change to be sufficiently safe;

b) the bank demonstrates to the National Bank of Moldova in a satisfactory manner that reclassification from the point of view of the prudential regulation of those instruments was not reasonably foreseeable at the time of their issuance;

2) there is a change in the tax regime applicable to these instruments and the bank demonstrates to the National Bank of Moldova in a satisfactory manner that the change is significant and was not foreseeable at the time of issuance.

124. If own funds instruments are purchased for the purpose of transferring them to the employees of the bank as part of their remuneration, banks deduct those instruments from the corresponding own funds level for the period in which they are held by the bank. This deduction is not necessary if the expenditure related to the transfer is already included in own funds as a result of an interim or end-of-term financial statement.

125. The procedure for submitting the application for prior approval of the National Bank of Moldova for repayments, reductions and redemptions, its content and the deadlines for submission are set out in Annex 5.

Section 4

Temporary exemption from deduction from own funds

126. If a bank temporarily owns equity instruments or subordinated loans, as appropriate, which qualify as common equity Tier 1 capital/equity instruments, additional Tier 1 own funds instruments or Tier 2 own funds instruments of an entity of a financial sector and the National Bank of Moldova considers that these holdings have the purpose of financial assistance for restructuring, the National Bank of Moldova may grant a temporary exemption from the application of the deduction provisions, which shall apply to those instruments.

127. In order to obtain the exemption referred to in paragraph 126, banks shall address a written request to the National Bank of Moldova with the relevant information that will explicitly indicate that the equity instruments held in an entity of the financial sector or the subordinated debts granted to such entities are for providing financial assistance for restructuring.

128. A temporary exemption shall be for a period not exceeding the period specified in the financial assistance operations plan. This exemption shall not be granted for a period longer than 5 years and applies only to new holdings in an entity of the financial sector that is subject of financial assistance operation.

129. In order to grant a temporary exemption for deduction from own funds, the National Bank of Moldova may consider temporary holdings in a financial assistance operation to restructure an entity of the financial sector if the operation is carried out under a plan and is approved by the National Bank of Moldova, and if the plan clearly sets out the stages, timing, objectives and specifies the interaction between the temporary holdings and the financial assistance operation.

Chapter VI¹

MINORITY INTERESTS THAT QUALIFY FOR INCLUSION IN OWN FUNDS AND OWN FUNDS INSTRUMENTS ISSUED BY SUBSIDIARIES

[Chapter VI¹ (par.129¹-129¹⁴) inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129¹. Minority interests shall comprise the sum of common equity Tier 1 instruments, the share premium accounts related to those instruments, retained earnings and other reserves of a subsidiary where the following conditions are met:

- 1) the subsidiary is a bank from the Republic of Moldova or from another state;
- 2) the subsidiary is included fully in the consolidation pursuant to the Regulation No 101/2020;
- 3) the respective instruments are owned by persons other than the undertakings included in the consolidation pursuant to the Regulation No 101/2020.

[Par.129¹ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129². Minority interests that are funded directly or indirectly by the parent undertaking of the bank, or its subsidiaries shall not qualify as consolidated common equity Tier 1 capital.

[Par.129² inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129³. The minority interest, additional Tier 1 or Tier 2 instruments, as applicable, plus the related retained earnings and share premium accounts, of a subsidiary, shall qualify for inclusion in the consolidated own funds of a bank, where the following conditions are met:

- 1) the subsidiary is a bank from the Republic of Moldova or from another state;
- 2) the subsidiary is included fully in the consolidation pursuant to the Regulation No 101/2020;
- 3) the respective instruments are owned by persons other than the undertakings included in the consolidation pursuant to the Regulation No 101/2020.

[Par.129³ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129⁴. Banks shall determine the amount of minority interests of a subsidiary that is included in consolidated common equity Tier 1 capital by subtracting from the minority interests of that undertaking the result of multiplying the amount referred to in sub-paragraph 1) by the percentage referred to in sub-paragraph 2):

- 1) the common equity Tier 1 capital of the subsidiary minus the lower of the following:
 - a) the amount of common equity Tier 1 capital of that subsidiary required to meet the sum of the requirement laid down in paragraph 130, sub-paragraph 1), the additional own funds requirements imposed by the National Bank of Moldova pursuant to Article 139 (5) of Law No 202/2017, the combined buffer requirement set out in Regulation No 110/2018, and any additional local supervisory regulations in third countries, if the subsidiary is located in another state, insofar as those requirements are to be met by common equity Tier 1 capital;
 - b) the amount of consolidated common equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in paragraph 130, sub-paragraph 1), the additional own funds requirements imposed by the National Bank of Moldova pursuant to Article 139 (5) of Law No 202/2017, the combined buffer requirement set out in Regulation No 110/2018, and any additional local supervisory regulations in third countries, if the subsidiary is located in another state, insofar as those requirements are to be met by common equity Tier 1 capital;
- 2) the minority interests of the subsidiary expressed as a percentage of all common equity Tier 1 instruments of that undertaking plus the related share premium accounts, retained earnings and other reserves.

[Par.129⁴ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129⁵. A parent financial holding company may not apply the provisions of paragraph 129⁴, with subsequent notification of the National Bank of Moldova, if it satisfies all the following conditions:

- 1) its principal activity is to acquire holdings;
- 2) it is subject to prudential supervision on a consolidated basis;

3) it consolidates a subsidiary in which it has only a minority holding by virtue of the control relationship;

4) more than 90% of the consolidated required common equity Tier 1 capital arises from the subsidiary referred to in sub-paragraph 3).

[Par.129⁵ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129⁶. The minority interests of a subsidiary referred to in paragraph 129¹, which is, in turn, a parent undertaking of an entity referred to in paragraph 129¹, shall be calculated according to the provisions in paragraph 129⁷ and 129⁸.

[Par.129⁶ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129⁷. If the subsidiary complies with the provisions on capital requirements on the basis of its consolidated situation, the following treatment shall apply:

1) common equity Tier 1 capital of that subsidiary, on a consolidated basis, provided for in paragraph 129⁴, sub-paragraph 1), includes qualifying minority interests arising from own subsidiaries, calculated according to paragraph 129⁴;

2) for the purpose of calculations at subsidiary level, the amount of common equity Tier 1 capital provided for in paragraph 129⁴, sub-paragraph 1), letter a), is the amount required to meet the common equity Tier 1 capital requirements of that subsidiary at the level of its consolidated situation calculated according to paragraph 129⁴, subparagraph 1).

3) the amount of consolidated common equity Tier 1 capital required according to paragraph 129⁴, sub-paragraph 1), letter b), is equal to the subsidiary's contribution, in accordance with its consolidated situation, to the common equity Tier 1 capital requirements of the bank for which the qualifying minority interests are calculated on a consolidated basis. For the purpose of calculating the contribution, all intragroup transactions between the undertakings included in the scope of the prudential consolidation of the bank shall be eliminated.

[Par.129⁷ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129⁸. When performing the consolidation referred to in paragraph 129⁷, sub-paragraph 3), the subsidiary shall not include the capital requirements related to its subsidiaries that are not included in the scope of the prudential consolidation of the bank for which the minority interests are calculated.

[Par.129⁸ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129⁹. If a parent bank has a subsidiary that is not referred to in paragraph 129¹ and if that subsidiary, in turn, has subsidiaries that are referred to in the mentioned paragraph, then the parent bank may include in its common equity Tier 1 capital the amount of minority interests of those subsidiaries, calculated according to paragraph 129⁴. However, the parent bank may not include in its common equity Tier 1 capital any minority interest of a subsidiary that is not referred to in paragraph 129¹.

[Par.129⁹ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129¹⁰. The methodology set out in paragraph 129⁷ and 129⁸ shall also apply, *mutatis mutandis*, to the calculation of the amount of qualifying Tier 1 instruments according to paragraph 129¹¹ and of the amount of qualifying own funds according to paragraph 129¹³, with references to common equity Tier 1 capital being interpreted as references to Tier 1 own funds or own funds.

[Par.129¹⁰ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129¹¹. Banks shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated own funds by subtracting from the qualifying Tier 1 capital of that undertaking the result of multiplying the amount referred to in sub-paragraph 1) by the percentage referred to in sub-paragraph 2) of this paragraph:

1) the common equity Tier 1 capital of the subsidiary minus the lower of the following:

a) the amount of Tier 1 capital of the subsidiary required to meet the sum of the requirement laid down in paragraph 130, sub-paragraph 2), the additional own funds requirements imposed by the National Bank of Moldova pursuant to Article 139 (5) of Law No 202/2017, the combined buffer requirement set out in Regulation No 110/2018, and any additional local supervisory regulations in third countries, if the subsidiary is located in another state, insofar as those requirements are to be met by Tier 1 capital;

b) the amount of consolidated Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in paragraph 130, sub-paragraph 2), the additional own funds requirements imposed by the National Bank of Moldova pursuant to Article 139 (5) of Law No 202/2017, the combined buffer requirement set out in Regulation No 110/2018, and any additional local supervisory regulations in third countries, if the subsidiary is located in another state, insofar as those requirements are to be met by Tier 1 capital;

2) the qualifying Tier 1 capital of the subsidiary expressed as a percentage of all Tier 1 instruments of that undertaking plus the related share premium accounts, retained earnings and other reserves.

[Par.129¹¹ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129¹². Without prejudice to paragraph 129⁵, banks shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated additional Tier 1 capital by subtracting from the qualifying Tier 1 capital of that undertaking included in consolidated Tier 1 capital the minority interests of that undertaking that are included in consolidated common equity Tier 1 capital.

[Par.129¹² inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129¹³. Banks shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds of that undertaking the result of multiplying the amount referred to in sub-paragraph 1) by the percentage referred to in sub-paragraph 2) of this paragraph:

1) the own funds of the subsidiary minus the lower of the following:

a) the amount of own funds of the subsidiary required to meet the sum of the requirement laid down in paragraph 130, sub-paragraph 3), the additional own funds requirements imposed by the National Bank of Moldova pursuant to Article 139 (5) of Law No 202/2017, the combined buffer requirement set out in Regulation No 110/2018, and any additional local supervisory regulations in third countries, if the subsidiary is located in another state;

b) the amount of own funds that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in paragraph 130 sub-paragraph 3), the additional own funds requirements imposed by the National Bank of Moldova pursuant to Article 139 (5) of Law No 202/2017, the combined buffer requirement set out in Regulation No 110/2018, and any additional local supervisory regulations in third countries, if the subsidiary is located in another state;

2) the qualifying own funds of the undertaking, expressed as a percentage of all own funds instruments of the subsidiary that are included in common equity Tier 1, additional Tier 1 and Tier 2 items and the related share premium accounts, the retained earnings and other reserves.

[Par.129¹³ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

129¹⁴. Without prejudice to paragraph 129⁵, banks shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated Tier 2 capital by subtracting from the qualifying own funds of that undertaking that are included in consolidated own funds the qualifying Tier 1 capital of that undertaking that is included in consolidated Tier 1 capital.

[Par.129¹⁴ inserted by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

Chapter VII

GENERAL OWN FUNDS AND CAPITAL REQUIREMENTS

130. Banks shall meet at any time the following own funds requirements:

- 1) a rate of common equity Tier 1 capital instruments of 5.5 %;
- 2) a rate of Tier 1 own funds instruments of 7.5 %;
- 3) a rate of total own funds instruments of 10.0 %;

131. Banks shall calculate their capital ratios as follows:

- 1) The rate of common equity Tier 1 capital instruments represents the common equity Tier 1 capital instruments of the bank expressed as a percentage of the total amount of risk exposure;
- 2) The rate of Tier 1 own funds instruments represents the Tier 1 own funds instruments of the bank expressed as a percentage of the total amount of risk exposure;
- 3) The rate of total own funds instruments represents the total own funds instruments of the bank expressed as a percentage of the total amount of risk exposure;

132. The total amount of risk exposure shall be equal to the sum of sub-paragraphs 1) –6) of this paragraph, after the provisions of paragraph 133 have been taken into account:

1) the amounts of credit risk-weighted exposures and incomplete transactions calculated in accordance with the Regulation No 111/2018 and Regulation No 115/2018, in respect of all the activities of a bank, excluding the risk-weighted exposure amounts of exposures in the trading book of the bank;

2) own funds requirements determined in accordance with the Regulation No 114/2018 or Regulation on large exposures, approved by the Decision of the Executive Board of the National Bank of Moldova No 109 of 5 April 2019 (hereinafter referred to as “Regulation No 109/2019”), as appropriate, applicable to the trading book of a bank, position risk or large exposures exceeding the limits set by Regulation No 109/2019, insofar as a bank may exceed the respective limits under its conditions;

3) the own funds requirements for foreign exchange and commodities risk determined in accordance with the Regulation No 114/2018, as well as the own funds requirements for the settlement risk determined in accordance with the Regulation No 115/2018;

4) the own funds requirements for operational risk, determined in accordance with the Regulation on the treatment of banks operational risk according to the basic indicator approach and the standardised approach, approved by the Decision of the Executive Board of the National Bank of Moldova No 113 of 25 May 2018;

5) the own funds requirements calculated in accordance with the Regulation on the treatment of credit valuation adjustment risk for banks, approved by Decision of the Executive Board of the National Bank of Moldova No 103/2020, for the risk related to credit adjustments for over-the-counter (OTC) derivatives other than credit derivatives recognized for reducing risk-weighted amounts of credit risk exposures;

6) the risk-weighted amounts of exposures determined in accordance with the Regulation on the treatment of counterparty credit risk for banks, approved by the Decision of the Executive Board of the National Bank of Moldova No 102/2020, for counterparty risk arising from the trading book of the bank for the contracts listed in the mentioned Regulation and credit derivatives, redemption transactions, securities or commodities lending or borrowing transactions, margin lending transactions based on securities or commodities, and long settlement transactions.

[Par.132 in the wording of NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

133. The following provisions shall apply for the calculation of the total risk exposure amount referred to in paragraph 132.

1) the own funds requirements referred to paragraph 132, sub-paragraph 3) and 4) include those arising from all activities of the bank;

2) banks multiply by 10.0 the own funds requirements set out in paragraph 132, sub-paragraph 2) to 5).

[Par.133 amended by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

134. The amount of the equity of a bank may not fall below the level of capital required for the issuance of the license.

135. Banks will replace the capital requirement referred to in paragraph 132, sub-paragraph 2) with a capital requirement calculated in accordance with sub-paragraph 1) from the same paragraph in respect of trading book business if the volume of on- and off-balance sheet trading book business:

- 1) normally represents less than 5% of the total assets;
- 2) never exceeds 6% of total assets.

136. When assessing the size of on- and off-balance sheet business, banks apply the following:

1) debt instruments are valued at their market prices or face value, equity securities at their market prices and derivatives in accordance with the nominal or market value of the underlying instruments;

2) the absolute value of the long positions is combined with the absolute value of the short positions.

137. If a bank does not meet the condition in paragraph 135, sub-paragraph 2), it must immediately notify the National Bank of Moldova in writing. If, following a notification, the National Bank of Moldova, following an assessment, finds that the bank does not meet the requirement in paragraph 135, sub-paragraph 1) and informs the bank thereof, the bank shall cease to apply paragraph 135 from the next reporting date.

Chapter VIII

PRELIMINARY APPROVAL FOR DISTRIBUTIONS OF PROFIT AND/OR FOR PAYMENT OF INTEREST

[Chapter VIII title amended by NBM Decision No 161 of 26 August 2021, in force from 10 October 2021]

Note: Throughout Chapter VIII, the words "distribution of capital" and "distribution of capital to bank shareholders", in any grammatical form, are replaced, in all cases, by the words "distribution of profit to shareholders and/or for the payment of interest to the holders of additional Tier 1 own funds instruments", in the appropriate grammatical form, according to NBM Decision No 161 of 26 August 2021, in force from 10 October 2021.

138. The bank cannot distribute profit to the shareholders and/or pay interest to the holders of additional Tier 1 own funds instruments, if the National Bank of Moldova believes that it will lead to the bank's failure to comply with requirements on own funds or other prudential indicators or to endangering the bank's stability.

[Par.138 in the wording of NBM Decision No 161 of 26 August 2021, in force from 10 October 2022]

139. The bank shall require prior approval by the National Bank of Moldova for the profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments at least 30 days before the bank board meeting, where the issue of profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments or the proposal to distribute the profit to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments to be submitted to the general meeting of the shareholders, will be examined. To request prior approval, the bank will present the following documents:

1) an application for the issuance of the prior approval signed by the chairman of the board of the bank regarding the profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments;

2) draft decision/order of the board of the bank/shareholders' general meeting on profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments;

3) the information note on the draft of the document referred to in sub-paragraph 2) indicating the purpose, the manner of distribution of the profit to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments, the amount envisaged for distribution, as well as other information, which the bank deems useful;

4) independent audit firm report on the financial statements of the bank at the latest management date;

5) additional information provided in the Regulation No 110/2018, where the bank requests prior approval under these acts.

[Par.139 amended by NBM Decision Nom161 of 26 August 2021, in force from 10 October 2022]

140. When distributing the profit to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments, the bank must take into account the opinion of the independent audit firm on the annual financial statements.

141. When examining the request of the bank, the National Bank of Moldova shall take into account at least the following:

1) the evolution of prudential indicators and financial performance indicators of the bank related to the income and profitability of capital, assets over the last three years;

2) the impact of subsequent, economic and social events on the bank's stability and ability to comply with those indicators determined, at least, by assessing the results of stress tests conducted by the bank and/or the National Bank of Moldova;

3) the supervisory, recovery and resolution measures applied by the National Bank of Moldova to the bank.

[Par.141 amended by NBM Decision No 161 of 26 August 2021, in force from 10 October 2022]

142. If the set of documents is incomplete and/or the deadline set in paragraph 139 is not met, the National Bank of Moldova shall inform the bank in writing about this at the latest 5 working days after the request was lodged. At the latest 10 days after receipt of the letter from the National Bank of Moldova, the bank shall complete and submit to the National Bank of Moldova the missing documents and/or information. If the bank does not complete the requested documents and information within the established time limit, the National Bank of Moldova shall inform the bank about the termination of the administrative procedure within 2 working days from the expiry of the provided period .

[Par.142 amended by NBM Decision No 161 of 26 August 2021, in force from 10 October 2022]

143. Within 20 days from the date of receipt of the complete package of documents, the National Bank of Moldova shall adopt a decision on granting prior approval for the profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments or refusal to issue the approval requested by the bank, giving written notice of its decision to the bank. The National Bank may grant prior approval for the entire amount requested by the bank or, for a smaller amount, if it considers that the distribution of profit to shareholders and/or the payment of interest to holders of additional Tier 1 own funds instruments, in the amount for which the bank has requested prior approval may lead to non-compliance with the requirements related to own funds or other prudential indicators or to endangering the stability of the bank.

[Par.143 supplemented by NBM Decision No 16 of 03 February 2022, in force from 25 March 2022]

[Par.143 in the wording of NBM Decision No 161 of 26 August 2021, in force from 10 October 2022]

144. If the National Bank of Moldova considers that an additional investigation is necessary for the examination of the request, the deadline set in paragraph 143 may be extended by up to 10 days with subsequent information from the bank. If the NBM deems it necessary, it may request additional pertinent information. The time limit set out in this paragraph shall be suspended until the date of receipt of the required information.

145. The bank shall ensure the inclusion of the issue regarding the prior approval for the profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments or refusal to issue the prior approval for the profit distribution to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments in the materials for the agenda of the bank board meeting and/or the general meeting of the shareholders in which the concerned issue will be examined.

[Par.145 in the wording of NBM Decision No 161 of 26 August 2021, in force from 10 October 2022]

146. Adoption of the decision to distribute the profit to the shareholders and/or for payment of interest to the holders of additional Tier 1 own funds instruments by the bank board or by the general meeting of the shareholders with the non-observance of the conditions prescribed by the prior approval of the National Bank of Moldova or in the absence of such prior approval attracts the sanctions provided by the Law No 202/ 2017 on the activity of banks.

[Par.146 in the wording of NBM Decision No 161 of 26 August 2021, in force from 10 October 2022]

Chapter IX

REPORTING OF OWN FUNDS

147. Banks report the level and composition of their own funds in line with the requirements set out in the National Bank of Moldova's instructions for banks to report COREP for supervisory purposes.

148. Banks must be able to prove, at any time, to the National Bank of Moldova that they meet the requirements of this Regulation.

Annex 1
to the Regulation on own funds and capital requirements

Meaning of the concept "foreseeable" in the wording "foreseeable dividends" and "foreseeable liabilities"

1. For the purpose of determining the amount of interim or end-of-year financial profits that may be included in common equity Tier 1 capital, the amount of the foreseeable dividends to be deducted by the banks from the said profits shall be determined in accordance with paragraphs 2-4.

2. Where the governing body of a bank has formally adopted a decision or proposed a decision to the board of the bank as to the amount of dividends to be distributed, that amount shall be deducted from the interim or end-of-year profits.

3. Where interim dividends are paid, the residual amount of the interim profit resulting from the calculation set out in paragraph 2 to be added to the common equity Tier 1 capital items shall be reduced, taking into account the provisions of paragraph 2 and 4, by the amount of any

foreseeable dividends to be paid out of the residual interim profit with the final dividends for the full financial year.

4. Before the bank's governing body adopts an official decision or proposes a decision to the competent body on the distribution of dividends, the amount of the foreseeable dividends to be deducted from the interim or end-of-year profits is equal to the amount of the interim or end-of-year profits multiplied by the dividend distribution rate.

5. The dividend distribution rate is determined on the basis of the dividend policy approved for the relevant period by the bank's governing body or other competent body. If the dividend policy provides for a dividend distribution period rather than a fixed amount, the upper limit of the range shall be used for the purposes of paragraph 2.

6. In the absence of an approved dividend policy or if, in the opinion of the National Bank of Moldova, there is a possibility that the bank may not apply the policy or that this policy does not constitute a prudent basis for determining the amount of the deduction, the distribution rate of dividends is based on the highest of the following:

- 1) the average dividend distribution rate over the three years preceding the year considered;
- 2) the dividend distribution rate in the year preceding the year considered.

7. The National Bank of Moldova may authorize the bank to adjust the calculation of the dividend distribution rate, in accordance with paragraph 6, in order to exclude exceptional dividends paid during the period.

8. The amount of the foreseeable dividends to be deducted shall be determined taking into account any regulatory restrictions on distributions, in particular the restrictions established in accordance with the Regulation No 110/2018. The amount of the profit after deduction of the foreseeable liabilities subject to such restrictions may be fully included in the common equity Tier 1 capital items if that profit has been audited by an audit firm. When such restrictions apply, the foreseeable dividends to be deducted are based on the capital conservation plan approved by the National Bank of Moldova pursuant to the Regulation No 110/2018.

9. The amount of the foreseeable dividends to be paid in a form that does not reduce the value of common equity Tier 1 capital items, such as share dividends, is not deducted from interim or end-of-year profits to be included in common equity Tier 1 capital items.

10. For the purpose of determining the amount of interim or end-of-year financial profits that may be included in common equity Tier 1 capital, the amount of the foreseeable liabilities to be deducted by the banks from the said profits shall include the following:

- 1) the amount of taxes and duties;
- 2) the value of any obligation or circumstance occurring during the reporting period concerned that could reduce the profits of a bank and for which the National Bank of Moldova is not certain that all necessary value adjustments, such as additional value adjustments, or provisions, were made.

11. The foreseeable liabilities that have already been taken into account in the profit and loss account are allocated to the interim period in which they were incurred so that each interim period includes a reasonable amount of those obligations. Significant or non-recurring events will be considered fully and without delay in the interim period in which they occur.

12. The National Bank of Moldova shall ensure that all necessary deductions are made from the interim or end-of-year profits, as well as all deductions related to the foreseeable liabilities and dividends, either in accordance with the accounting framework or under any other adjustments, before allowing the bank to include interim or end-of-year financial profits in common equity Tier 1 capital.

Annex 2
to the Regulation on own funds and capital requirements

Nature and forms of direct and indirect funding of equity instruments

1. For the purposes of this Regulation, direct funding refers to situations where a bank has granted a loan or funding in any form to an investor for the purpose of using it for the purchase of equity instruments.

2. Direct funding also includes funding for purposes other than the acquisition of capital instruments of a bank, any individual or legal entity who has a qualifying holding in a bank or who is considered to be a person affiliated to the bank if the bank has not demonstrated that the transaction is carried out under similar conditions to other third-party transactions and that the individual or legal entity or related party did not rely on distributions or the sale of equity instruments held to bear interest and repayment of the funding.

3. Indirect funding of equity instruments refers to funding which is not direct.

4. The nature and applicable forms of indirect funding for the purchase of equity instruments of a bank include the following:

1) funding the acquisition of an investor on or after issuance of a bank's capital instruments by any entity over which the bank has direct or indirect control or by entities included in the scope of the bank's accounting or prudential consolidation and/the scope of supplementary supervision of the bank;

2) funding the acquisition of an investor on or after issuance of a bank's equity instruments by entities that are protected by a collateral or the use of a credit derivative or otherwise secured so that credit risk is transferred to the bank or to any of the entities over which that bank has direct or indirect control, or by any entity included in the scope of the bank's accounting or prudential consolidation and/or in the scope of supplementary supervision of the bank;

3) funding granted to a debtor transferring the funding of the final investor for the acquisition, on issuance or afterwards, of a bank's equity instruments.

5. In order to be considered indirect funding, both the investor and the external entity should also not be included in the scope of the bank's accounting or prudential consolidation and/or in the scope of supplementary supervision of the bank.

6. When determining whether the acquisition of a capital instrument involves direct or indirect funding, the amount to be taken into account does not include any impairment provisions following the individual valuation.

7. In order to avoid classification as direct or indirect funding and where the loan or other form of funding or guarantees are granted to any individual or legal entity who has a qualifying holding in the bank or is deemed to be an affiliated person, the bank shall permanently ensure that it did not grant the loan or other form of funding or guarantees for the purpose of directly or indirectly subscribing to bank capital instruments. If the loan or other form of funding or guarantees are granted to other types of parties, the bank shall carry out this control in the best possible manner.

Annex 3

to the Regulation on own funds and capital requirements

Multiple distributions, which represent a disproportionate burden on own funds, and preferential distributions

Section 1

Multiple distributions, which represent a disproportionate burden on own funds

1. It is considered that distributions of common equity Tier 1 capital instruments do not represent a disproportionate burden on capital if all of the following conditions are met:

1) the dividend multiple is a multiple of the distribution made for voting instruments and not a predetermined fixed amount;

2) the dividend multiple is set by contract or bank statute;

- 3) the dividend multiple cannot be reviewed;
- 4) the same dividend multiple applies to all instruments with a dividend multiple;
- 5) the amount of distribution for a single instrument with a dividend multiple does not represent more than 125% of the amount of distribution for a common equity Tier 1 capital instrument with voting rights.

This is expressed in the following formula:

$$l \leq 1,25 \times k,$$

where:

l - represents the amount of distribution for a single instrument with a dividend multiple;

k - represents the amount of distribution for a single instrument without a dividend multiple;

- 6) the total amount of distributions made for all common equity Tier 1 capital instruments for a period of one year shall not exceed 105% of the amount that would have been paid if instruments with fewer voting rights or no voting rights would benefit from the same distributions as voting instruments.

This is expressed in the following formula:

$$kX + lY \leq (1,05) \times k \times (X + Y),$$

where:

k - represents the amount of distribution for a single instrument without a dividend multiple;

l - represents the amount of distribution for a single instrument with a dividend multiple;

X - is the number of voting instruments;

Y - is the number of non-voting instruments.

The formula shall be applied annually.

2. If the condition set out in paragraph 1, sub-paragraph 6) is not met, it is considered that only that part of instruments generating a dividend multiple exceeding the threshold defined in that paragraph creates a disproportionate burden on capital.

3. If any of the conditions set out in paragraph 1 is not met, all instruments in circulation with a dividend multiple are considered to create a disproportionate burden on capital.

Section 2

Preferential distributions for preferential rights at distribution, and the distribution order

4. For the purposes of paragraph 16, sub-paragraph 8) of this Regulation, a distribution for a common equity Tier 1 capital instrument is considered to be preferential in relation to other common equity Tier 1 capital instruments when there are differentiated levels of distributions, unless the conditions laid down in Section 1 of this Annex are met.

5. A distribution for a common equity Tier 1 capital instrument is considered to be preferential in relation to other common equity Tier 1 capital instruments and as regards the order of distribution when at least one of the following conditions is met:

- 1) a decision is taken on distributions at different times;
- 2) distributions are made at different times;
- 3) there is an obligation on the bank as an issuer to make distributions for a certain type of common equity Tier 1 capital instruments prior to making distributions for other types of common equity Tier 1 capital instruments;
- 4) a distribution is made for some common equity Tier 1 capital instruments but not for others.

Annex 4
to the Regulation on own funds and capital requirements

Indirect and synthetic holdings, and the method of calculation

Section 1

Indirect and synthetic holdings

1. For the purposes of the term "indirect holding" in this Regulation, the term "intermediate entity" shall refer to any of the following entities holding equity/own equity instruments, as appropriate, of entities of the financial sector:

- 1) a collective investment institution;
- 2) a pension fund that is not a defined benefit pension fund;
- 3) a defined benefit pension fund, if the bank bears the investment risk and the defined benefit pension fund is not independent of the sponsoring company;
- 4) entities that are controlled or significantly influenced, directly or indirectly, by one of the following entities:
 - a) bank or its subsidiaries;
 - b) parent undertaking of the bank and its subsidiaries;
 - c) the parent financial holding company of the bank or its subsidiaries;
 - d) the mixed-activity holding company or its subsidiaries;
 - e) mixed financial holding company or its subsidiaries;
- 5) entities which are jointly, directly or indirectly, under the control or under the significant influence of a bank;
- 6) entities whose business consists in holding financial instruments issued by entities of the financial sector;
- 7) any entity that, in the opinion of the National Bank of Moldova, has been used with the intent to circumvent the rules on the deduction of indirect and synthetic holdings.

2. Notwithstanding paragraph 1, sub-paragraph 7), the term "intermediate entity" shall not refer to:

- 1) mixed-activity holding companies, banks, investment companies/firms, insurance companies and reinsurance companies;
- 2) banks from other states where prudential supervision and regulation provisions are considered equivalent to the regulatory acts issued by the National Bank of Moldova under the Law No 202 of 6 October 2017 on the activity of banks;
- 3) entities of the financial sector not referred to in sub-paragraph 1) and subject to supervision and the obligation to deduct from their own regulatory capital the direct and indirect holdings of equity instruments and holdings of capital instruments of entities of the financial sector.

3. The following financial products are considered as synthetic holdings of equity instruments:

- 1) derivative instruments for which the underlying asset is the capital instruments of an entity of the financial sector or for which the entity of the financial sector is the reference entity;
- 2) collateral or credit protection provided to a third party and having as its object the investments of the third party in a capital instrument of an entity of the financial sector.

4. The financial products referred to in paragraph 3 include the following:

- 1) investments in *total return swap* instruments having as object a capital instrument of an entity of the financial sector;
- 2) purchase options purchased by the bank, which have as object a capital instrument of an entity of the financial sector;
- 3) the *put* options sold by the bank, having as object a capital instrument of an entity of the financial sector or any other contractual or actual contractual obligation of the bank to buy its own equity instruments;
- 4) investments in outright forward purchase (*forward purchase agreements*), having as object a capital instrument of an entity of the financial sector.

5. For the purposes of paragraph 4, sub-paragraph 1), a *total return swap* is a swap arrangement where one party makes payments based on an established, fixed or variable rate whereas the other party makes payments based on the return of an underlying asset including both the revenue it generates and any capital gains. In *total return swap*, the underlying asset is usually

an equity index, loans or bonds. This instrument is held by the party receiving the payment based on the established tariff.

Section 2

Calculation of indirect holdings

6. The amount of indirect holdings to be deducted from common equity Tier 1 capital items shall be calculated using one of the following methods:

- 1) in accordance with the standard approach set out in Subsection 1 of this Annex;
- 2) if the bank satisfactorily demonstrates to the National Bank of Moldova that the standard approach is excessively burdensome in line with the structure-based approach described in Subsection 2 of this Annex. The structure-based approach is not used by banks to calculate the amount of these deductions in relation to investments in the intermediate entities referred to in paragraphs 1, sub-paragraphs 2) and 3) of this Annex.

Subsection 1

Standard approach for calculating indirect holding

7. The amount of indirect holdings of common equity Tier 1 capital instruments to be deducted, as required by paragraph 30, sub-paragraphs 6), 8) and 9), of this Regulation, shall be calculated as follows:

- 1) where the exposures of all investors to the intermediate entity are equal, the amount shall be equal to the percentage of the funding multiplied by the amount of common equity Tier 1 capital/own equity instruments, as appropriate, of the financial sector entity held by the entity intermediate;
- 2) if the exposures of all investors to the intermediate entity are not equal, the amount shall be equal to the percentage of funding multiplied by the lowest of the following amounts:
 - a) the amount of common equity Tier 1 capital/own equity instruments, if any, of the entity of the financial sector that are held by the intermediate entity;
 - b) the exposure of the bank to the intermediate entity, together with all other funding provided to the intermediate entity that is equal to the exposure of the bank.

8. The calculation set out in paragraph 7 of this Annex shall be made separately for each holding in an entity of the financial sector held by each intermediate entity. The calculation method set out in paragraph 7, sub-paragraph 2) shall apply for each tranche of funding equal to that provided by the bank.

9. The percentage of funding within the meaning of paragraph 7 of this Annex shall be equal to the bank's exposure to the intermediate entity divided by the sum of the exposure of the bank and the intermediate entity and all other exposures to that intermediate entity that are equal to the exposure of the bank.

10. Where the investments in common equity Tier 1 capital/own equity instruments, where applicable, of an entity of the financial sector are held indirectly through subsequent intermediate entities or several intermediate entities, the percentage of funding provided for in paragraph 7 of this Annex shall be determined by dividing the amount referred to in sub-paragraph 1) by the amount referred to in sub-paragraph 2):

- 1) the result of the multiplication of the amounts of funding provided by the bank to intermediate entities by the amounts of funding provided by those intermediate entities to subsequent intermediate entities and the amounts of funding provided by those subsequent intermediate entities to the entity of the financial sector;
- 2) the result of the multiplication of the amounts of the capital instruments or other instruments, as the case may be, issued by each intermediate entity.

11. The percentage of funding shall be calculated separately for each holding of intermediate entities in an entity of the financial sector and for each tranche of funding equal to the funding provided by the bank and the subsequent intermediate entities.

Subsection 2

The structure-based approach for calculating indirect holdings

12. The amount to be deducted from common equity Tier 1 capital items referred to in paragraph 30, sub-paragraph 6) of this Regulation shall be equal to the percentage of funding as defined in paragraph 9 of this Annex multiplied by the amount of common equity Tier 1 capital instruments of the bank that are held by the intermediate entity.

13. The amount to be deducted from the common equity Tier 1 capital items referred to in paragraph 30, sub-paragraph 8) and 9) of this Regulation shall be equal to the percentage of funding as defined in paragraph 9 of this Annex multiplied by the aggregate amount of common equity Tier 1 capital items of the entities of the financial sector that are held by the intermediate entity.

14. For the purposes of paragraphs 12 and 13 of this Annex, a bank shall separately calculate for each intermediate entity the aggregate amount of common equity Tier 1 capital instruments of the bank, held by the intermediate entity and the aggregate amount of common equity Tier 1 capital/own equity instruments, as appropriate, of other entities of the financial sector that are held by the intermediate entity.

15. The bank considers the amount of holdings of common equity Tier 1 capital instruments of entities of the financial sector, calculated in accordance with paragraph 13 of this Annex, as a significant investment and deducts the amount in accordance with paragraph 30, sub-paragraph 9) of this Regulation.

16. Where investments in common equity Tier 1 capital/own equity instruments, as the case may be, are held indirectly through subsequent intermediate entities or several intermediate entities, the provisions of paragraphs 10 and 11 of this Annex shall apply.

17. If a bank cannot identify the aggregate amounts held by the intermediate entity in the common equity Tier 1 capital instruments of the bank or in the common equity Tier 1 capital instruments of entities of the financial sector, the bank shall estimate the amounts which it cannot identify by using the maximum amounts that the intermediate entity may hold on the basis of its investment mandates.

18. If the bank cannot establish, on the basis of the investment mandate, the maximum amount held by the intermediate entity in the common equity Tier 1 capital instruments of the bank or in the common equity Tier 1 capital/own equity instruments of entities of the financial sector, then the bank shall treat the amount of funding it holds in the intermediate entity as an investment in its common equity Tier 1 capital instruments and shall deduct it in accordance with paragraph 30, sub-paragraph 6) of this Regulation.

19. By way of derogation from paragraph 18, the bank shall treat the amount of funding it holds in the intermediate entity as an insignificant investment and shall deduct it in accordance with paragraph 30, paragraph 8) of this Regulation, if all of the following conditions are met:

- a) the amount of funding represents less than 0.25% of the common equity Tier 1 capital instruments of the bank;
- b) the bank cannot reasonably determine the amounts of its common equity Tier 1 capital instruments held by the intermediate entity.

Section 3

Calculation of synthetic holdings

20. The amount of synthetic holdings to be deducted from common equity Tier 1 capital items as required by paragraph 30, sub-paragraph 6), 8) and 9) of this Regulation, is as follows:

- 1) for holdings in the trading book:
 - a) in the case of options, the amount of delta equivalent of the relevant instruments, calculated in accordance with the regulatory acts of the National Bank of Moldova related to the market risk;
 - b) in the case of any other synthetic holdings, the nominal or notional amount, as the case may be;
- 2) for non-trading book holdings:

- a) in the case of purchase options, the current market value;
- b) in the case of any other synthetic holdings, the nominal or notional amount, as the case may be.

21. The bank shall deduct the synthetic holdings from the date of signing the contract with the counterparty.

Section 4

Holding of additional Tier 1 and Tier 2 own funds items

22. The methodology referred to in the above paragraphs applies to holdings of additional Tier 1 and Tier 2 own funds items, the references to common equity Tier 1 capital are interpreted as references to additional Tier 1 or Tier 2 own funds, as appropriate.

Section 5

Order and maximum amount of deductions of indirect holdings of own funds instruments of entities of the financial sector

23. Subject to the limitations set out in paragraphs 24 and 25, if the intermediate entity holds common equity Tier 1 capital/own equity instruments, as appropriate, additional Tier 1 and Tier 2 own funds instruments of financial entities, the common equity Tier 1 capital instruments are deducted first, followed by additional Tier 1 and Tier 2 own funds instruments.

24. If the intermediate entity holds equity instruments of some banks and investment firms/companies, banks shall deduct first the holdings of own funds instruments when applying paragraph 23 to each type of holding.

25. Where a bank indirectly holds capital instruments of entities of the financial sector, the amount to be deducted from the own funds of the bank shall not be higher than the lowest of the following amounts:

- 1) the total funding provided by the bank to the intermediate entity;
- 2) the amount of own funds instruments held by the intermediate in the entity of the financial sector.

Annex 5

to the Regulation on own funds of banks and capital requirements

Procedure for submitting the request for prior approval of the National Bank of Moldova for repayments, reductions, and redemptions, and its content and deadlines for submission

1. The bank shall not notify the holders of own funds instruments about repayments, reductions, and redemptions of own funds instruments before receiving a prior approval from the National Bank of Moldova for this purpose.

2. If the bank has received a prior approval from the National Bank of Moldova and has publicly announced its intention to repay, reduce, or redeem an own funds instrument, the bank shall deduct the appropriate amounts to be repaid, reduced or redeemed from the corresponding items of its own funds before the actual repayment, reduction or redemption takes place.

3. The bank shall submit a request to the National Bank of Moldova, before reducing or redeeming common equity Tier 1 capital instruments or exercising the option of sale, repayment or redemption of additional Tier 1 or Tier 2 own funds instruments, prior to the contractual maturity date. The request shall include a limited-term deployment plan for several capital instruments.

4. The request referred to in paragraph 3 of this Annex shall be accompanied by the following information:

- 1) a well-founded explanation of the reasons for carrying out one of the operations referred to in paragraph 3;

2) information on capital requirements and capital buffers covering at least a three-year period, including the level and composition of own funds before and after the action, and the impact of the action on regulatory requirements;

3) the impact of the replacement of a capital instrument on the profitability of a bank, in accordance with paragraph 120 of this Regulation;

4) an assessment of the risks to which the bank is exposed or to which it may be exposed and whether the level of own funds provides adequate coverage of those risks, including stress tests on the main risks that highlight potential losses according to different scenarios;

5) any other information deemed necessary by the National Bank of Moldova to assess the conformity of the approval with the provisions of paragraphs 120-123 of this Regulation.

5. When reviewing the request, new information obtained during this period shall be taken into account, if the National Bank of Moldova considers this information to be significant.

6. The National Bank of Moldova shall examine the request referred to in paragraph 3 of this Annex within 45 days from the date of its submission to the National Bank of Moldova. The time limit may be extended by up to 10 days, with subsequent notification of the bank at least 3 days before the expiry of the request review period.

7. If the set of documents is incomplete, the National Bank of Moldova shall return the set of documents within 5 days at the latest, without examination.

[Annex No 5 amended by NBM Decision No 161 of 26 August 2021, in force since 10 October 2021]